TEXAS REGISTER

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Kathy Cribbs
10th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
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To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is http://www.oag.state.tx.us. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. http://www.state.tx.us/Government

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0339-GA

Requestor:

The Honorable Norma Chavez

Chair, Border and International Affairs Committee

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a civil service commission may authorize retroactive salary increases for municipal employees (Request No. 0339-GA)

Briefs requested by June 10, 2005

RQ-0340-GA

Requestor:

Mr. Robert Maxwell, Executive Director

Texas State Board of Plumbing Examiners

929 East 41st Street

Austin, Texas 78701

Re: Extent and effect of conflict, if any, between two statutory definitions of the term "plumbing inspector" (Request No. 0340-GA)

Briefs requested by June 6, 2005

RQ-0341-GA

Requestor:

The Honorable Greg Lowery

Wise County Attorney

Wise County Courthouse, Room 300

Decatur, Texas 76234

Re: Whether a statutory county court judge is entitled to receive compensation that was authorized by but never paid in accordance with section 25.0005 of the Government Code (Request No. 0341-GA)

Briefs requested by June 6, 2005

RQ-0342-GA

Requestor:

Mr. Jerry Clark

Executive Vice President and General Manager

Sabine River Authority of Texas

Post Office Box 579

Orange, Texas 77631

Re: Whether the Sabine River Authority may sell surplus real property to an adjoining landowner without holding a public sale (Request No. 0342-GA)

Briefs requested by June 10, 2005

RQ-0343-GA

Requestor:

The Honorable Robert Vititow

Rains County Attorney

220 W. Quitman

Emory, Texas 75440

Re: Whether a county that does not have a full-time court reporter may collect a fee pursuant to section 51.601 of the Government Code (RQ-0343-GA)

Briefs requested by June 16, 2005

RQ-0344-GA

Requestor:

The Honorable Troy Fraser

Chair, Business and Commerce Committee

Texas Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether a school district that contracts with a tax appraisal district for collection services may offer a discount for early payment of taxes (RQ-0344-GA)

Briefs requested by June 16, 2005

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200501975
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: May 17, 2005

♦ ♦ ♦

Opinion

Opinion No. GA-0324

The Honorable Carole Keeton Strayhorn

Texas Comptroller of Public Accounts

Post Office Box 13528

Austin, Texas 78711-3528

Re: Whether the Texas Treasury Safekeeping Trust Company may enter into repurchase agreement contracts that contemplate the possibility of cash as collateral (RQ-0295-GA)

S U M M A R Y

The Texas Comptroller of Public Accounts may not invest state funds or TexPool funds held by the Texas Treasury Safekeeping Trust Company in direct security repurchase agreement contracts that contemplate the possibility of cash as collateral.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200501987
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: May 18, 2005

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TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinion

EAO-462. The Texas Ethics Commission has been asked to consider whether a former elected officeholder may use unexpended political contributions to make expenditures in connection with his current non-elected position at a state agency. (AOR - 523)

SUMMARY

A former elected statewide officeholder may use unexpended political contributions to make expenditures in connection with his current non-elected position at a state agency.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 36, Penal Code; and (8) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200501960
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: May 16, 2005

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.52, §20.61

The Texas Ethics Commission proposes new §20.52 and an amendment to §20.61, relating to rules that would require the description of a political expenditure for travel outside of Texas to include detailed information regarding travel.

The new §20.52 requires the description of an in-kind political contribution for travel outside of Texas to include the name of the persons traveling on whose behalf the travel was accepted and certain detailed information regarding the travel.

The amendment to §20.61 requires the description of a political expenditure for travel outside of Texas to include the name of the persons traveling on whose behalf the expenditure for travel was made and certain detailed information regarding the travel.

David A. Reisman, Executive Director, has determined that for each year of the first five years the rules are in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rules as proposed. Mr. Reisman has also determined that these rules will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rules are in effect, the anticipated public benefit will be more complete disclosure regarding in-kind political contributions for travel and political expenditures for travel.

Mr. Reisman has also determined that there will be no direct adverse effect on small businesses or micro-businesses because these rules do not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rules.

The Texas Ethics Commission invites comments on the proposed rules from any member of the public. A written statement should be mailed or delivered to David A. Reisman, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The new §20.52 and the amendment to §20.61 are proposed under Government Code, Chapter 571, Section 571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed new §20.52 and the amendment to §20.61 affects title 15 of the Election Code.

§20.52. Description of In-Kind Contribution for Travel.

The description of an in-kind contribution for travel outside of the state of Texas must provide the following:

(1) The name of the person or persons traveling on whose behalf the travel was accepted;

(2) The means of transportation;

(3) The name of the departure city or the name of each departure location;

(4) The name of the destination city or the name of each destination location;

(5) The dates on which the travel occurred;

(6) The campaign or officeholder purpose of the travel, including the name of a conference, seminar, or other event.

§20.61. Description of Expenditure.

(a) The report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure.

(b) The description of a political expenditure for travel outside of the state of Texas must provide the following:

(1) The name of the person or persons traveling on whose behalf the expenditure was made;

(2) The means of transportation;

(3) The name of the departure city or the name of each departure location;

(4) The name of the destination city or the name of each destination location;

(5) The dates on which the travel occurred;

(6) The campaign or officeholder purpose of the travel, including the name of a conference, seminar, or other event.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 16, 2005.

TRD-200501955
David A. Reisman
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: June 26, 2005
For further information, please call: (512) 463-5800

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.1

The Texas State Board of Examiners of Psychologists proposes amendments to §463.1, Types of Licensure. These amendments are being proposed in order to facilitate statutory changes in provisional licensure set by HB 1015, of the 79th Legislature.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Lee has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to make the rule simpler. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.1. Types of Licensure.

The Board accepts applications for four types of licenses to practice psychology in the state of Texas:

(1) - (2) (No change.)

(3) Provisionally Licensed Psychologist. This is a doctoral level license to practice psychology under the supervision of a licensed psychologist. This license is a prerequisite for licensure as a psychologist. Requirements for provisionally licensed psychologist are found in §463.10 of this title (relating to Provisionally Licensed Psychologist) and §463.14 of this title. An individual who is provisionally licensed in accordance with §463.10(c) of this title and who is currently licensed to independently practice psychology in another state may practice without supervision after submission of an application for licensure as a psychologist to the Board. Upon notification from the Board that such an applicant has not met the qualifications for licensure as a psychologist, the provisionally licensed psychologist must obtain supervision within 30 days in order to continue to practice.

(4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 16, 2005.

TRD-200501946
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: June 26, 2005
For further information, please call: (512) 305-7700

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 521. FEE SCHEDULE

22 TAC §521.13

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.13 concerning Firm License Fees.

The amendment to §521.13 will modify the chart referred to in subsection (b) so that the fees charged for each CPA employee and non-CPA Owner will be equal to or less then the maximum amount permitted by §901.351 of the Public Accountancy Act. The fee for all offices in Texas with CPA employees and non-CPA owners of 50 or more has been decreased to $25.00 for each such person.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be compliance with the statutory requirement.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the fees to be collected will be lower than originally proposed.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on June 17, 2005. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333

Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §901.351 regarding Firm License Required.

No other article, statute or code is affected by this proposed amendment.

§521.13. Firm License Fees.

(a) The fee for a firm license shall be $50 for each office of the firm in Texas plus the fee required by subsection (b) of this section, if any.

(b) A firm shall pay an additional fee based on the number of CPAs employed at the firm in Texas plus the number of non-CPA owners of the firm in Texas, in accordance with the following chart: Figure: 22 TAC §521.13(b)

(c) A firm "employs" a CPA within the meaning of this rule when:

(1) a CPA is a partner, owner, member, shareholder, or employee of the firm;

(2) a CPA works at the firm, either temporarily or long term, under a lease agreement or contract with any other entity, including but not limited to personnel staffing agencies or service companies affiliated with the firm;

(3) a CPA works at the firm on anything less than a full time basis;

(4) a CPA has any of the relationships described in paragraphs (1)-(3) of this subsection with an entity that is a partner, owner, member, or shareholder of the firm; or

(5) a CPA has any of the relationships described in paragraphs (1)-(3) of this subsection with an entity affiliated with the firm and that CPA participates in performing professional services for clients of the firm.

(d) Each firm shall certify to the board the highest number of CPAs it employs within the meaning of this rule during the 30 days prior to filing its application. Each CPA should be counted only once, even if he or she has more than one relationship as described in paragraphs (1)-(5) of subsection (c).

(e) If a firm is required to be licensed in Texas but has no office in Texas, the fee shall be $50 plus the fee required by subsection (b) of this section, if any.

(f) Firm license fees shall not be prorated or refunded.

(g) A firm whose license has been expired for 90 days or less may renew the license by paying the board a penalty of $150.00 in addition to the license fee required to be paid under subsections (a), (b) and (c) of this section.

(h) A firm whose license has been expired for more than 90 days may renew the license by paying the board a penalty of $250.00 in addition to the license fee required to be paid under subsections (a), (b) and (c) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 12, 2005.

TRD-200501928
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: June 26, 2005
For further information, please call: (512) 305-7848

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CHAPTER 527. PEER REVIEW

22 TAC §527.6

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.6 concerning Reporting to the Board.

The amendment to §527.6 will add the "corrective action letter" and delete the "conditional letter of acceptance" as acceptable reports to the Board.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clarification of what reports are acceptable to the Board.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment only substitutes one report for another.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on June 17, 2005. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§527.6. Reporting to the Board.

(a) A firm shall submit to the board:

(1) a copy of the report and the final letter of acceptance (FLOA) from the sponsoring organization, if such report is unmodified with or without comments; or

(2) a copy of the report, letter of comments (LOC), letter of response (LOR), the corrective action letter (CAL)[~~conditional letter of acceptance (CLOA)~~], and FLOA if the report is modified in any respect or adverse;

(3) a copy of the report, and LOR, if any, in a report review including any significant action in the CAL[~~CLOA~~] and FLOA and the unqualified written commitment from the firm under review that it accepts the finding of the reviewer and that it will implement any follow up actions recommended;

(4) a copy of any notice from the sponsoring organization that a report review contains significant issues;

(5) a copy of any final report resulting from any inspection by the PCAOB firm inspection program together with documentation of any significant issues and findings and the firm's response.

(b) Any report or document required to be submitted under subsection (a) of this section shall be filed with the board within ten days of receipt of the notice of acceptance by the sponsoring organization.

(c) Any document submitted to the board under this section is confidential pursuant to the Act.

(d) The reviewed firm or sponsoring organization shall complete the board's Peer Review Compliance Reporting Form. The form shall be filed with the board upon final acceptance of the review by the sponsoring organization. All the information requested on the form shall be provided. The firm shall complete the appropriate portions of the form. The form and all required letters shall be filed with the board within ten days of receipt of the FLOA.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 12, 2005.

TRD-200501929

Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: June 26, 2005
For further information, please call: (512) 305-7848

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PART 40. ADVISORY BOARD OF ATHLETIC TRAINERS

CHAPTER 871. ATHLETIC TRAINERS
SUBCHAPTER A. GENERAL GUIDELINES AND REQUIREMENTS

22 TAC §§871.7, 871.9, 871.12

The Advisory Board of Athletic Trainers (board) proposes amendments to §§871.7, 871.9, and 871.12 concerning the licensure and regulation of athletic trainers.

The proposed amendments add a method by which applicants qualify for licensure with a baccalaureate or post-baccalaureate degree in athletic training from a college or university that is accredited by a nationally recognized accrediting organization that is approved by the board. The proposed amendments also qualify applicants to take the state examination if they are within two semesters of graduation and currently enrolled in an athletic training program at a college or university that is accredited by a nationally recognized accrediting organization that is approved by the board. Additionally, the proposed rules clarify acceptable continuing education activities and the types of documentation that will be accepted by the board as proof of completing continuing education activities.

Heather Muehr, Program Director, Advisory Board of Athletic Trainers, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections as proposed.

Ms. Muehr has also determined that for each of the first five years the sections are in effect, the public benefit as a result of enforcing or administering the sections will be assurance that the regulation of athletic trainers continues to identify competent providers. There is no anticipated cost to micro-businesses or small businesses to comply with the sections as proposed because the requirements apply only to licensed individuals. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Heather Muehr, Program Director, Advisory Board of Athletic Trainers, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6615, or Heather.Muehr@dshs.state.tx.us. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The amendments are proposed under the Occupations Code, §451.103, which authorizes the board to adopt rules necessary for the performance of its duties

The amendments affect the Occupations Code, Chapter 451.

§871.7. Qualifications.

(a) - (b) (No change.)

(c) In place of the requirements in subsections (a) and (b) of this section, applicants qualifying under the Act, §451.153(a)(1) shall have a baccalaureate or post-baccalaureate degree in athletic training from a college or university which held accreditation, during the applicants matriculation at the college or university and at the time the degree was conferred, from a nationally recognized accrediting organization that is approved by the board.

(d) [~~(c)~~] Applicants qualifying under the Act, §451.153(a)(2) or §451.153(a)(3) shall have a baccalaureate or post-baccalaureate degree or a state issued certificate in physical therapy or a baccalaureate or post-baccalaureate degree in corrective therapy with at least a minor in physical education or health. Applicants who hold such degrees must complete three semester hours of a basic athletic training course from an accredited college or university. An applicant shall also complete an apprenticeship in athletic training meeting the following requirements.

(1) The program shall be a minimum of 720 hours. It must be based on the academic calendar and must be completed during at least three fall and/or spring semesters. The hours must be under the direct supervision of a college or university's Texas licensed athletic trainer or if out-of-state, the college or university's certified or state licensed athletic trainer. The apprenticeship includes a minimum of 360 hours per year. Hours in the classroom do not count toward apprenticeship hours.

(2) Actual working hours shall include a minimum of 20 hours per week during each fall semester. A fall semester includes pre-season practice sessions. The apprenticeship must offer work experience in a variety of sports.

(3) The apprenticeship must be completed in a college or university's intercollegiate sports program. A maximum of 240 hours of the 720 hours may be earned as a collegiate, secondary school, or professional affiliated setting which the college or university's athletic trainer has approved. No more than 120 hours may be earned at one affiliated setting.

(e) [~~(d)~~] Certification required. An applicant must have:

(1) a current adult cardiopulmonary resuscitation certificate; or

(2) current certification for emergency medical services (EMS) with the Department of State Health Services.

(f) [~~(e)~~] The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other means acceptable to the board.

(g) [~~(f)~~] The board shall not accept courses which an applicant's transcript indicates were not completed with a passing grade for credit.

(h) [~~(g)~~] Documentation of the apprenticeship program must be provided by completion of the proper forms prescribed by the board.

(i) [~~(h)~~] Each applicant must have a baccalaureate or post-baccalaureate degree from a college or university which held accreditation, at the time the degree was conferred, from an accepted regional educational accrediting association reported by the American Association of Collegiate Registrars and Admissions Officers.

§871.9. Examination for Licensure.

(a) - (b) (No change.)

(c) An applicant may file an application for examination if the applicant:

(1) - (2) (No change.)

(3) has completed at least 1300 hours of the required 1800 hours and the apprenticeship program is in progress [~~if the applicant qualifies under the Act, §451.153(a)(1)~~]; [~~or~~]

(4) is currently enrolled in, and within two semesters of graduating from, an athletic training program at a college or university which holds accreditation from a nationally recognized accrediting organization that is approved by the board, if the applicant qualifies under the Act, §451.153(a)(1); or

(5) [~~(4)~~] has completed at least 600 hours of the required 720 hours and the apprenticeship program is in progress if the applicant qualifies under the Act, §451.153(a)(2) or §451.153(a)(3).

(d) - (k) (No change.)

§871.12. Continuing Education Requirements.

(a) - (b) (No change.)

(c) Continuing education credit undertaken by a licensee for renewal shall be acceptable if the experience falls in one or more of the following categories:

(1) (No change.)

(2) clinical courses related to athletic training and/or sports medicine;

(3) - (7) (No change.)

(d) Continuing education experience shall be credited as follows.

(1) - (3) (No change.)

(4) Successful completion of courses described in subsection (c)(7) of this section is evidenced by a certificate of completion presented by the [~~publisher, or~~] sponsoring organization of the self-study program.

(5) (No change.)

(6) Successful completion of courses related to athletic training and/or sports medicine as described in subsection (c)(2) and (3) of this section is evidenced by a certificate of completion or attendance that is issued by the sponsoring organization of the course.

(e) - (f) (No change.)

(g) The audit process shall be as follows.

(1) (No change.)

(2) All licensees selected for audit will furnish documentation such as official transcripts, certificates, diplomas, [~~receipts, agendas, programs, or~~] an affidavit identifying the continuing education experience satisfactory to the board, or any other documentation requested by the board to verify having earned the continuing education hours listed on the continuing education report form. The documentation must be provided to the department upon request.

(3) (No change.)

(h) - (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 16, 2005.

TRD-200501959

Natalie Steadman
Chair
Advisory Board of Athletic Trainers
Earliest possible date of adoption: June 26, 2005
For further information, please call: (512) 458-7236

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TITLE 25. HEALTH SERVICES

PART 11. TEXAS CANCER COUNCIL

CHAPTER 701. POLICIES AND PROCEDURES

25 TAC §701.8

The Texas Cancer Council (TCC) proposes amendments to §701.8, concerning charges for copies of public records.

The amendments are proposed to update the name of agency whose rules TCC now uses to establish charges for copies of public records.

Sandra K. Balderrama, MPA, BSW, the Executive Director of the Texas Cancer Council, has determined that for the first five-year period the amendments are in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the amended rule.

Ms. Balderrama also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amended rule will be clarification of the policies and procedures the Council will follow to implement the *Texas Cancer Plan*. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed.

Ms. Balderrama has determined that the amended rule shall not have an effect on small businesses or micro businesses.

Comments on the proposed amendments may be submitted to Sandra Balderrama, Executive Director, Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711.

The amendments are proposed under the Texas Health and Safety Code, Annotated, §102.002 and §102.009 which provide the Texas Cancer Council with the authority to develop and implement the *Texas Cancer Plan*, and the Texas Government Code, Annotated, §2001.004.

There is no other statute, article or code that is affected by this proposed amendment.

§701.8. Charges for Copies of Public Records.

(a) The charge to any person requesting copies of any public record of the Council will be the charge established by the Texas Building and Procurement Commission [~~General Services Commission~~] at 1 TAC §§111.61 - 111.70 (relating to Costs of Copies of Open Records).

(b) The Council may reduce or waive these charges at the discretion of the Executive Director if there is a public benefit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2005.

TRD-200501945

Sandra K. Balderrama
Executive Director
Texas Cancer Council
Earliest possible date of adoption: June 26, 2005
For further information, please call: (512) 463-3190

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

The Texas Commission on Environmental Quality (commission) proposes amendments to §§115.167, 115.169, 115.219, 115.427, and 115.429; and corresponding revisions to the state implementation plan (SIP).

These amended sections and corresponding revisions to the SIP are proposed to be submitted to the United States Environmental Protection Agency (EPA).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The 1990 Federal Clean Air Act (FCAA) Amendments authorized EPA to designate areas failing to meet national ambient air quality standards (NAAQS) for ozone as nonattainment and to classify them according to severity. The Beaumont-Port Arthur (BPA) one-hour ozone nonattainment area consists of Hardin, Jefferson, and Orange Counties. The BPA area was originally classified as a "serious" one-hour ozone nonattainment area in 1991, and was required to meet the one-hour ozone NAAQS by November 1999. Based on subsequent review of the BPA area's ozone monitoring data showing lower recorded ozone levels, EPA reclassified BPA as "moderate" on April 2, 1996. The commission adopted a series of SIP revisions culminating in the "Super SIP" submitted in July 1996, which contained only controls for volatile organic compounds (VOCs). However, the BPA region did not attain the one-hour ozone standard by the November 1996 deadline for moderate areas. Based on photochemical modeling demonstrating transport from the Houston-Galveston-Brazoria (HGB) ozone nonattainment area, the commission requested an extension of the attainment date to November 2007, the attainment date for HGB.

On April 16, 1999, EPA proposed, in the *Federal Register*, to extend the BPA attainment date to November 15, 2007, based on its ozone transport policy in effect at the time. EPA's transport policy provided that in determining the appropriate attainment date for an area, EPA may consider the effect of transport of ozone or its precursors from an upwind area that interferes with the downwind area's ability to attain. On May 15, 2001, EPA approved the transport demonstration and extended the attainment date for the BPA area to November 15, 2007, while retaining the area's classification as "moderate." Environmental groups subsequently challenged EPA's extension of attainment dates based on transport in the United States Court of Appeals for the Fifth Circuit. BPA was one of three areas in the nation for which suits were filed. On December 11, 2002, the Fifth Circuit Court of Appeals ruled that EPA is not authorized by the FCAA to extend the

area's attainment date based on transport. On June 19, 2003, EPA proposed, in the *Federal Register*, to reclassify BPA to either serious or severe, with a November 2005 attainment date for either classification. EPA published final action in the *Federal Register* on March 30, 2004, effective April 29, 2004, and determined that the BPA area failed to attain the one-hour NAAQS by the deadline for moderate areas (November 15, 1996) as well as for serious areas (November 15, 1999), as set forth in the FCAA. EPA reclassified BPA from moderate to serious nonattainment under the FCAA, as codified in the 42 United States Code (USC), §§7401 *et seq*., with an attainment date of the one-hour ozone standard by November 15, 2005. This reclassification required Texas to submit a SIP revision within one year of the reclassification.

The commission adopted the required SIP revision on October 27, 2004. This proposal fulfills commitments made by the commission in that submittal to address major source applicability cutoffs for purposes of reasonably available control technology (RACT) and to address contingency measures previously adopted under the 15% rate of progress (ROP) requirements.

Under 42 USC, §7511(b), the EPA is required to issue control techniques guideline (CTG) guidance documents for the purpose of assisting states in developing reasonably available control technology (RACT) controls for major sources of VOC emissions. In turn, each state is required to submit a revision to its SIP that implements RACT regulations for VOC sources in moderate or above one-hour ozone nonattainment areas. 42 USC, §7511(b)(2)(A) requires states to submit RACT regulations for VOC sources that are covered by a CTG issued after November 15, 1990 (the enactment date of the 1990 FCAA), but prior to the time of attainment. Similarly, 42 USC, §7511(b)(2)(C), requires that RACT be applied to major VOC sources located in moderate or above one-hour ozone nonattainment areas that are not the subject of a CTG; such sources are known as "non-CTG" sources. Limits in state rules must be at least as stringent as the CTG limits or otherwise must be determined to meet RACT.

The reclassification of BPA from moderate to serious nonattainment resulted in a change in the major source definition from 100 tons per year (tpy) to 50 tpy. Rules in Chapter 115 for two source categories exempt sources at accounts that have less than 100 tpy of VOC. In order to ensure that RACT is applied to all major sources in BPA, the commission is proposing to change the exemption levels in these rules from 100 tpy to 50 tpy of VOC to conform to the major source threshold for sources in serious nonattainment areas. The two source categories are batch process operations and shipbuilding and repair operations. Shipbuilding and repair operations include surface coating of ships and offshore oil or gas drilling platforms. The commission published rules for RACT requirements for batch processes in BPA on November 12, 1999, and published rules for RACT requirements for shipbuilding and repair operations on April 3, 1998.

This proposed rulemaking will also delete §115.219(d), which requires control of VOCs from marine terminals in the BPA nonattainment area. This rule was adopted as a contingency measure in Chapter 115, Subchapter C, Division 1, on January 4, 1995. States are required by 42 USC, §7502(C)(9) to submit a SIP that provides for the implementation of contingency measures to be undertaken if the area fails to make reasonable further progress, or to attain the one-hour NAAQS by the attainment date. This measure has not been implemented by the commission, even though the BPA area failed to achieve attainment of the one-hour NAAQS by the attainment date, November 15, 1996. The 1994 ROP SIP for BPA (November 9, 1994) cited projected VOC emissions of 13.10 tons per day (tpd) from marine vessel loading, and projected emission reductions of 10.02 tpd for the contingency rule. If the measure had become effective and been implemented in 1999, as it would have if EPA had not attempted to extend the attainment date based on its transport policy, affected sources would have been required to comply by 2002 (three years after becoming effective). According to the commission's 2002 emissions inventory, actual emissions from marine vessel loading in 2002 in BPA were 1.92 tpd, which indicates an emission reduction of 11.18 tpd. Even though the contingency measure was not put into effect, equivalent emission reductions were achieved. In addition, photochemical modeling indicates that reductions in nitrogen oxide (NO_x) emissions in BPA are more effective in reducing ozone levels than reductions in VOC emissions. Reductions of 1.0 tpd of NO_x are equivalent to reductions of 3.8 tpd of VOC. For these reasons, the BPA SIP is being revised to remove the marine vessel loading contingency measure. The proposed rule change would delete this contingency measure for the BPA nonattainment area from Chapter 115.

Reductions in NO_x have been implemented in place of the marine vessel loading measure. After expiration of the NO_x §182(f) waivers on December 31, 1997, all major NO_x sources in the BPA one-hour ozone nonattainment area were required to implement RACT. The commission adopted a revised compliance date of November 15, 1999, for these sources to comply with the RACT requirements. The commission also adopted rules establishing NO_x emission limits for gas-fired, lean-burn stationary internal combustion engines rated 300 horsepower or greater. Implementation of this rule resulted in estimated emission reductions of 6.9 tpd below 1997 levels. The reductions from the lean burn engine rules were above and beyond those needed for the ROP demonstration. The reduction of 6.9 tpd of NO_x is equivalent to a reduction of 26.2 tpd VOC, which is greater than the estimated reduction that would have been achieved by implementing the marine vessel loading contingency measure.

SECTION BY SECTION DISCUSSION

Administrative and grammatical changes are proposed throughout the sections to bring the existing rule language into agreement with guidance provided in the *Texas Legislative Council Drafting Manual*, October 2002. This includes, but is not limited to, replacing the term "shall" with "must" and replacing the term "which" with "that." The commission is seeking comment specifically regarding the proposed changes to §§115.167(1)(A), 115.169(a) and (c), 115.219(d), 115.427(a)(3)(H), and 115.429(c). The commission is not seeking comment on, nor does it intend to make changes to, any other subsections of these sections with the exception of the administrative and grammatical changes.

Subchapter B, General Volatile Organic Compound Sources

Division 6, Batch Processes

§115.167, Exemptions

The proposed amendment to §115.167(1)(A) would change the exemption level for sites in BPA from 100 tpy of VOC to 50 tpy of VOC in order to ensure that RACT is applied at all major sources. This change is necessary because of the reclassification of the BPA area to serious nonattainment with respect to the one-hour ozone standard.

§115.169, Counties and Compliance Schedules

The proposed amendment to §115.169 would revise the existing text in §115.169(a) to specify that the owner or operator of batch process operations at an account that has total VOC emissions (determined before control but after the last recovery device) of 100 tpy or more shall continue to comply with this division as required by 30 TAC §115.930. This change would ensure that sources currently subject to the batch process control requirements of this division would continue to comply with the applicable requirements. The reference to the compliance date of December 31, 2001, would be deleted because this date has passed. The proposal would also delete the requirement that these sources continue to comply with the requirements of Subchapter B, Division 2, until the batch process operations are in compliance with the requirements of Subchapter B, Division 6. This wording is no longer necessary because the affected operations are already required to be in compliance with the requirements of Division 6.

The proposed amendment to §115.169 would add a new subsection (c), to specify that the owner or operator of batch process operations in Hardin, Jefferson, and Orange Counties that become subject to the control requirements because of the change in exemption level shall comply with the requirements as soon as practicable, but no later than December 31, 2006. These batch process operations must continue to comply with the requirements of Subchapter B, Division 2, concerning Vent Gas Control, until these batch process operations are in compliance with the requirements of Subchapter B, Division 6.

Subchapter C: Volatile Organic Compound Transfer Operations

Division 1: Loading and Unloading of Volatile Organic Compounds

§115.219, Counties and Compliance Schedules

The proposed amendment to §115.219 would delete subsection (d). Current analyses indicate that this contingency measure is no longer needed in order for the BPA area to reach attainment with the one-hour ozone standard. Measures that have been implemented to reduce NO_x emissions have exceeded the reduction targets needed for reasonable further progress. The excess NO_x reductions are more effective in reducing ozone formation than the VOC reductions from implementation of this contingency measure would have been.

Subchapter E, Solvent-Using Processes

Division 2, Surface Coating Processes

§115.427, Exemptions

The proposed amendment to §115.427(a)(3)(H) would change the exemption level for sources in the BPA from 100 tpy to 50 tpy of VOC in order to ensure that RACT is applied at all major sources. This change is necessary because of the reclassification of the BPA area to serious nonattainment with respect to the one-hour ozone standard.

§115.429, Counties and Compliance Schedules

The proposed amendment to §115.429 would add a new subsection (c), to specify that shipbuilding and repair facilities in Hardin, Jefferson, and Orange Counties that become subject to the control requirements because of the change in exemption level must comply with the requirements as soon as practicable, but no later than December 31, 2006. Shipbuilding and ship repair facilities that are already subject to the control requirements must remain in compliance as specified in §115.429(a).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The proposed rules address a revision in exemption levels for VOC emissions in the BPA area necessitated by EPA's redesignation of the area from moderate to serious for the one-hour ozone standard. None of the facilities anticipated to be affected by the proposed rules are owned or operated by units of state or local governments.

In the past, the BPA one-hour nonattainment area for ozone, consisting of Hardin, Jefferson, and Orange Counties, was classified as moderate. BPA did not meet the 0.12 parts per million standard for the moderate classification by the November 1996 deadline, nor did the BPA area meet the same standard by a November 1999 deadline, which EPA had established for serious nonattainment areas. EPA has now reclassified the BPA area to a serious one-hour nonattainment designation with an attainment deadline of November 15, 2005. The reclassification of BPA from a moderate nonattainment area to a serious nonattainment area changes the definition of a major source of ozone production and the acceptable threshold limits for those sources. These changes must be reflected in the SIP. This means that the BPA area has to adopt, for newly designated major sources, RACT for lower emission levels of VOCs.

Under current rules for moderate nonattainment areas, sites with VOC emissions of 100 tpy or more are designated as major sources and required to apply RACT. Under the proposed rules, sources would be designated as major and trigger RACT at a lower threshold of 50 tpy of VOC emissions. The proposed rules would mean that previously exempt industrial sites would be required to implement RACT to aid in lowering ozone levels in the BPA area to 0.12 parts per million. The types of sites affected by the proposed rules would be batch processing operations, shipbuilding operations, ship repair operations, and surface coating operations for ships and offshore oil or gas drilling platforms.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with FCAA SIP requirements and progress towards achieving attainment with the one-hour ozone NAAQS in the BPA area.

Batch processing operations, shipbuilding operations, ship repair operations, and surface coating operations for ships and offshore oil or gas platforms in Hardin, Jefferson, and Orange Counties that have VOC emissions equal to or greater than 50 tpy, but less than 100 tpy would be affected by the proposed rules.

Available information indicates that, currently, no known batch process operations in the BPA area would be affected by the proposed rules. Batch process operations in the BPA area tend to be located at sites that either emit less than 50 tpy of VOC emissions and would be exempt from the proposed rules, or emit more than 100 tpy of VOC emissions and are already subject to emission standards. Therefore, the proposed rules are expected to have no fiscal impact on batch process operations in the BPA area. However, if a batch process operation is located at a site

that emits between 50 - 100 tpy of VOCs, it would be subject to the proposed rules and would experience a potentially significant fiscal impacts. The actual cost of compliance depends on many factors, but EPA estimates indicate that costs could range from $43,000 - $800,000 per year, or $215,000 - $4 million over a five-year period.

Air permits and emission inventory data indicates that two shipbuilding and ship repair accounts in the BPA area may be affected by the proposed rules. EPA's estimates for shipbuilding/ship repair sites to comply with RACT are an average of $11,000 per year, or $55,000 over a five-year period. Therefore, the proposed rules are not expected to have a significant fiscal impact on BPA sites engaged in shipbuilding, ship repair, or surface coating of ships and offshore rigs whose emission levels fall in the range addressed by the proposed rules.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses under the proposed rules. Small or micro-businesses engaging in activities producing VOCs tend to have ozone emission levels of less than 50 tpy. If a small or micro-business has emission levels of 50 tpy of VOCs, it would experience the same fiscal impact as a large business under the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rule amendments are one element of the BPA SIP and would require major sources in BPA to apply RACT to obtain VOC emissions reductions and would remove a contingency measure for marine vessel loading in the BPA nonattainment area. These proposed rule amendments are necessary to comply with the requirements of the FCAA and to achieve attainment in the BPA ozone nonattainment area. The proposed rules are not anticipated to adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, the proposed amendments do not meet any of the four applicability criteria of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The proposed rule amendments implement requirements of 42 USC. Under 42 USC, §§7410, *et seq*., states are required to adopt a SIP that provides for "implementations, maintenance, and enforcement" of the primary NAAQS in each air quality control region of the state. For nonattainment areas that are designated as moderate and above, 42 USC, §7511a(b)(2)(C) requires states to submit SIPs that include provisions to require implementation of RACT at major stationary sources of VOCs that are in the nonattainment area. As discussed previously, this rulemaking would amend major source exemptions from 100 tpy to 50 tpy to reflect BPA's reclassification to serious and require RACT at major sources that emit 50 tpy or more VOCs. In addition, this rulemaking would remove a contingency measure for marine vessel loading. This measure was not implemented and, as discussed previously, this measure is unnecessary because equivalent emission reductions were achieved without implementation of the measure.

As discussed earlier in this preamble, this rulemaking implements the requirements of 42 USC. The proposed rules do not exceed a requirement of a delegation agreement or a contract between state and federal government. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. The proposed rules were not developed solely under the general powers of the agency, but are proposed under the Texas Clean Air Act (TCAA), as codified in Texas Health and Safety Code (THSC), §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking action and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The specific purpose of these revisions is to amend major source exemption levels for batch processes and surface coating processes in the BPA nonattainment area due to BPA's reclassification by EPA to a serious ozone nonattainment area and to remove a contingency measure that was never implemented in the BPA ozone nonattainment area.

Texas Government Code, §2007.003(b)(4), provides that Chapter 2007 does not apply to this proposed rulemaking because it is reasonably taken to fulfill an obligation mandated by federal law. States are primarily responsible for ensuring attainment and maintenance of NAAQS once EPA has established them. Under 42 USC, §§7410, *et seq*. and related provisions, states must submit, for approval by EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. For ozone nonattainment areas that are designated moderate or above, 42 USC, §7511a(b)(2)(C), requires that RACT be applied at major stationary sources of VOCs. Through this proposed rulemaking and SIP revision, the commission is implementing RACT at major sources of VOCs in the BPA area by amending the major source exemption levels from 100 tpy to 50 tpy, the level for major stationary sources of VOCs in serious ozone nonattainment areas. This rulemaking is also removing a contingency measure

for loading of VOCs into marine vessels in the BPA area. Under 42 USC, §7502(c)(9), states must submit, as part of their SIP, contingency measures to be implemented if an area fails to make reasonable further progress or fails to attain the NAAQS by the attainment date. As discussed previously, this measure was never implemented and the commission proposes to remove it because equivalent emission reductions have been achieved without implementing the measure.

In addition, Texas Government Code, §2007.003(b)(13), states that Chapter 2007 does not apply to an action that: 1) is taken in response to a real and substantial threat to public health and safety; 2) is designed to significantly advance the health and safety purpose; and 3) does not impose a greater burden than is necessary to achieve the health and safety purpose. Although the purpose of these amendments do not directly prevent a nuisance or prevent an immediate threat to life or property, they do prevent a real and substantial threat to public health and safety and significantly advance the health and safety purpose. This action is taken in response to the BPA area exceeding the federal ozone NAAQS, which adversely affects public health, primarily through irritation of the lungs. This proposed rulemaking will ensure that additional VOC emission reductions will be achieved at major stationary sources through the implementation of RACT in the BPA. VOC is an ozone precursor that reacts with NO_x in sunlight to form ozone. The action will specifically advance the health and safety purpose by reducing VOC levels, and consequently ozone levels in the BPA nonattainment area. In addition, this rulemaking will remove a contingency measure that has not been implemented. The removal of the contingency measure does not specifically advance the health and safety purpose by reducing ozone levels in the BPA nonattainment area, but is part of a larger scheme to reduce ozone levels as expeditiously as possible in the BPA nonattainment area. Consequently, these proposed amendments meet the exemption in Texas Government Code, §2007.003(b)(13). This rulemaking therefore meets the requirements of Texas Government Code, §2007.003(b)(4) and (13). For these reasons, the proposed amendments do not constitute a takings under Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking action and found that the proposal is an action identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in §505.11, and therefore will require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission determined that, under 31 TAC §505.22, the rulemaking action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants will be authorized and ozone levels will be reduced as a result of these amendments. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies. Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 115 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program; therefore, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised Chapter 115 requirements at their sites affected by the revisions to Chapter 115.

ANNOUNCEMENT OF HEARINGS

Two public hearings on this proposal will be held on June 16, 2005, at 2:00 p.m. and 6:00 p.m. in the Swan Room, at the South East Texas Regional Planning Commission, located at 2210 Eastex Freeway in Beaumont, Texas. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearings. Individuals may present oral statements when called upon in order of registration. A time limit may be established at each hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearings; however, commission staff members will be available to discuss the proposal 30 minutes before each hearing and will answer questions before and after each hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact Lola Brown at (512) 239-0348. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239-4808; or emailed to *siprules@tceq.state.tx.us* with Rule Project Number 2005-017-115-AI in the subject line. All comments should reference Rule Project Number 2005-017-115-AI. Comments must be received by 5:00 p.m., June 17, 2005. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tnrcc.state.tx.us/oprd/rules/propadop.html*. For further information, please contact Teresa Hurley of the Air Quality Planning and Implementation Division at (512) 239-5316.

SUBCHAPTER B. GENERAL VOLATILE ORGANIC COMPOUND SOURCES
DIVISION 6. BATCH PROCESSES

30 TAC §115.167, §115.169

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These amendments are also proposed under THSC, TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property;

§382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

These proposed amendments implement TWC, §§5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, and 382.017.

§115.167. Exemptions.
The following exemptions apply.

(1) Batch process operations at an account that [~~which~~] has total volatile organic compound (VOC) emissions (determined before control but after the last recovery device) of less than the following rates from all stationary emission sources included in the account are exempt from the requirements of this division (relating to Batch Processes), except for §115.161(b) and (c) of this title (relating to Applicability):

(A) 50 [~~100~~] tons per year (tpy) in the Beaumont-Port Arthur [~~Beaumont/Port Arthur~~] area; and

(B) 25 tpy in the Houston-Galveston-Brazoria [~~Houston/Galveston~~] area.

(2) The following are exempt from the requirements of this division, except for §§115.161(b) and (c), 115.164, and 115.166(2) and (3) of this title (relating to Applicability; Determination of Emissions and Flow Rates; and Monitoring and Recordkeeping Requirements).

(A) Combined vents from a batch process train that [~~which~~] have the following annual mass emissions total.
Figure: 30 TAC §115.167(2)(A) (No change.)

(B) (No change.)

§115.169. Counties and Compliance Schedules.

(a) The owner or operator of each batch process operation in Hardin, Jefferson, and Orange Counties at an account that has total volatile organic compound (VOC) emissions (determined before control but after the last recovery device) of 100 tons per year or more shall continue to comply [~~shall demonstrate compliance~~] with this division (relating to Batch Processes) as required by §115.930 of this title (relating to Compliance Dates). [~~as soon as practicable, but no later than December 31, 2001. All batch process operations subject to this division in Hardin, Jefferson, and Orange Counties shall continue to comply with the requirements of Division 2 of this subchapter (relating to Vent Gas Control) until these batch process operations are in compliance with the requirements of this division.~~]

(b) The owner or operator of each batch process operation in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall demonstrate compliance with this division [~~(relating to Batch Processes)~~] as soon as practicable, but no later than December 31, 2002. All batch process operations subject to this division in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties must [~~shall~~] continue to comply with the requirements of Division 2 of this subchapter (relating to Vent Gas Control) until these batch process operations are in compliance with the requirements of this division.

(c) The owner or operator of each batch process operation in Hardin, Jefferson, and Orange Counties at an account that has total VOC emissions (determined before control but after the last recovery device) of 50 tons per year or more but less than 100 tons per year shall demonstrate compliance with this division as soon as practicable, but no later than December 31, 2006. All batch process operations subject to this division in Hardin, Jefferson, and Orange Counties must continue to comply with the requirements of Division 2 of this subchapter until these batch process operations are in compliance with the requirements of this division.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2005.

TRD-200501937
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 26, 2005
For further information, please call: (512) 239-0348

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SUBCHAPTER C. VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS
DIVISION 1. LOADING AND UNLOADING OF VOLATILE ORGANIC COMPOUNDS

30 TAC §115.219

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also proposed under THSC, TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

These proposed amendments implement TWC, §§5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, and 382.017.

§115.219. Counties and Compliance Schedules.

(a) - (c) (No change.)

[~~(d) The owner or operator of each marine terminal in Hardin, Jefferson, and Orange Counties shall comply with this division as soon as practicable but no later than three years after the earliest of the following occurs:~~]

[~~(1) the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of failure to attain the national ambient air quality standard for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9);~~]

[(2) the EPA publishes notification in the *Federal Register* of its determination to deny the petition to redesignate the Beaumont-Port Arthur ozone nonattainment area as an ozone attainment area; or]

[(3) the EPA publishes notification in the *Federal Register* of its determination to deny approval of the demonstration of attainment for the Beaumont/Port Arthur ozone nonattainment area based upon Urban Airshed Model modeling.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2005.

TRD-200501938
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 26, 2005
For further information, please call: (512) 239-0348

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SUBCHAPTER E. SOLVENT-USING PROCESSES
DIVISION 2. SURFACE COATING PROCESSES

30 TAC §115.427, §115.429

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These amendments are also proposed under THSC, TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

These proposed amendments implement TWC, §§5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, and 382.017.

§115.427. Exemptions.

(a) For the Beaumont-Port Arthur, Dallas-Fort Worth [Beaumont/Port Arthur, Dallas/Fort Worth], El Paso, and Houston-Galveston-Brazoria [Houston/Galveston] areas, the following exemptions [shall] apply.

(1) - (2) (No change.)

(3) The following exemptions apply to surface coating operations, except for vehicle refinishing (body shops) controlled by §115.421(a)(8)(B) and (C) of this title. Excluded from the volatile organic compound (VOC) emission calculations are coatings and solvents used in surface coating activities that [which] are not addressed by the surface coating categories of §115.421(a)(1) - (15) of this title. For example, architectural coatings (i.e., coatings that [which] are applied in the field to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs) at a property would not be included in the calculations.

(A) Surface coating operations on a property that [which,] when uncontrolled[,] will emit a combined weight of VOC of less than three pounds per hour and 15 pounds in any consecutive 24-hour period are exempt from §115.421(a) of this title and §115.423 of this title (relating to Alternate Control Requirements).

(B) Surface coating operations on a property that [which,] when uncontrolled[,] will emit a combined weight of VOC of less than 100 pounds in any consecutive 24-hour period are exempt from §115.421(a) and §115.423 of this title if documentation is provided to and approved by both the executive director and the EPA to demonstrate that necessary coating performance criteria cannot be achieved with coatings that [which] satisfy applicable emission specifications and that control equipment is not technically or economically feasible.

(C) (No change.)

(D) Mirror backing coating operations located on a property that [which,] when uncontrolled[,] emit a combined weight of VOC less than 25 tons in one year (based on historical coating and solvent usage) are exempt from this division (relating to Surface Coating Processes).

(E) Wood furniture manufacturing facilities that [which] are subject to and are complying with §115.421(a)(14) of this title and §115.422(3) of this title (relating to Control Requirements) are exempt from §115.421(a)(13) of this title. These wood furniture manufacturing facilities must [shall] continue to comply with §115.421(a)(13) of this title until these facilities are in compliance with §115.421(a)(14) and §115.422(3) of this title.

(F) Wood furniture manufacturing facilities that [which,] when uncontrolled[,] emit a combined weight of VOC from wood furniture manufacturing operations less than 25 tons per year are exempt from §115.421(a)(14) and §115.422(3) of this title.

(G) (No change.)

(H) Shipbuilding and ship repair operations in Hardin, Jefferson, and Orange Counties that [which,] when uncontrolled[,] emit a combined weight of VOC from ship and offshore oil or gas drilling platform surface coating operations less than 50 [100] tons per year are exempt from §115.421(a)(15) and §115.422(4) of this title.

(I) Shipbuilding and ship repair operations in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties that [which,] when uncontrolled[,] emit a combined weight of VOC from ship and offshore oil or gas drilling platform surface coating operations less than 25 tons per year are exempt from §115.421(a)(15) and §115.422(4) of this title.

(J) The following activities where cleaning and coating of aerospace vehicles or components may take place are exempt from this division: research and development, quality control, laboratory testing, and electronic parts and assemblies, [;] except for cleaning and coating of completed assemblies.

(4) - (6) (No change.)

(b) For Gregg, Nueces, and Victoria Counties, the following exemptions [shall] apply.

(1) Surface coating operations located at any property that [which,] when uncontrolled[,] will emit a combined weight of VOC less than 550 pounds (249.5 kg) in any continuous 24-hour period are

exempt from §115.421(b) of this title. Excluded from this calculation are coatings and solvents used in surface coating activities that [~~which~~] are not addressed by the surface coating categories of §115.421(b)(1) - (10) of this title. For example, architectural coatings (i.e., coatings that [~~which~~] are applied in the field to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs) at a property would not be included in the calculation.

(2) - (4) (No change.)

§115.429. Counties and Compliance Schedules.

(a) - (b) (No change.)

(c) The owner or operator of each shipbuilding and ship repair operation in Hardin, Jefferson, and Orange Counties that when uncontrolled emits a combined weight of volatile organic compounds from ship and offshore oil or gas drilling platform surface coating operations greater than 50 tons per year and less than 100 tons per year shall comply with this division as soon as practicable, but no later than December 31, 2006.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2005.

TRD-200501939
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 26, 2005
For further information, please call: (512) 239-0348

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 437. FEES

37 TAC §437.5

The Texas Commission on Fire Protection (TCFP) proposes an amendment to Texas Government Code, Chapter 437, §437.5, Renewal Fees. The purpose of the proposed amendment is to implement a $5.00 increase in the fee charged to renew certifications for certified individuals and certified training facilities, making the renewal fee $25 instead of $20. If adopted, this increase would enable the TCFP to maintain current levels of: 1) regulatory oversight of the certification of fire service personnel (mandated by Texas Government Code, §419.026(d)); and 2) training assistance to fire departments (mandated by Texas Government Code, §419.031), which may be in jeopardy due to potential budget cuts.

The TCFP has determined the amendment to be in compliance with Texas Government Code, §419.022(b) and §419.026(a).

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendment is in effect there will be a minimal fiscal impact on state and local governments who pay for the renewal of the certifications of their fire protection personnel pursuant to Texas Government Code, §419.026(a). Individuals and organizations that hold a commission certification and pay for their own renewals will also have a minimal increase for the annual renewal.

Mr. Soteriou has also determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be the assurance that levels of regulatory oversight will be maintained despite budget constraints, and that high standards will be maintained for certification of fire service personnel, resulting in greater public safety.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of this proposal in the *Texas Register*.

The amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.026, which provides the TCFP with authority to set and collect a fee of not more than $35 for each certificate that the TCFP issues or renews.

Texas Government Code, §419.008 and §419.026 are affected by this rulemaking.

§437.5. Renewal Fees.

(a) A $25 [~~$20~~] non-refundable annual renewal fee shall be assessed for each certified individual and certified training facility. If an individual or certified training facility holds more than one certificate, the commission may collect only one $25 [~~$20~~] renewal fee which will renew all certificates held by the individual or certified training facility.

(b) - (p) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 12, 2005.

TRD-200501923
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: June 26, 2005
For further information, please call: (512) 239-4921

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 37. FINANCIAL ASSURANCE

SUBCHAPTER W. FINANCIAL ASSURANCE FOR DRY CLEANING FACILITIES

30 TAC §§37.9201, 37.9205, 37.9210, 37.9215, 37.9220

The Texas Commission on Environmental Quality withdraws the proposed new §§37.9201, 37.9205, 37.9210, 37.9215, and 37.9220 which appeared in the November 12, 2004, issue of the *Texas Register* (29 TexReg 10442).

Filed with the Office of the Secretary of State on May 12, 2005.

TRD-200501921
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Effective date: May 12, 2005
For further information, please call: (512) 239-0348

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CHAPTER 337. DRY CLEANER ENVIRONMENTAL RESPONSE

SUBCHAPTER G. NON-PERCHLOROETHYLENE USERS AND FACILITIES

30 TAC §337.60

The Texas Commission on Environmental Quality withdraws the proposed new §337.60 which appeared in the November 12, 2004, issue of the *Texas Register* (29 TexReg 10444).

Filed with the Office of the Secretary of State on May 12, 2005.

TRD-200501922
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Effective date: May 12, 2005
For further information, please call: (512) 239-0348

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION (ICF/MR)

1 TAC §355.457

The Health and Human Services Commission (HHSC) adopts the amendment to §355.457, concerning the reimbursement methodology for Intermediate Care Facilities for persons with mental retardation (ICF/MR), in its Medicaid Reimbursement Rates chapter, without changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 453) and will not be republished.

The amended §355.457(c)(2)(B), Fiscal Accountability, changes reference from Texas Department of Mental Health and Mental Retardation (TDMHMR) to the Department of Aging and Disability Services (DADS). The proposal also reinstates language inadvertently deleted that relates to the fiscal accountability requirements for providers and the requirements for repayment of funds to DADS when the fiscal accountability requirements are not met.

The amended §355.457(c)(2)(B) and (C) changes references from TDMHMR to DADS.

The amended §355.457(c)(2)(D) sets forth the repayment requirements for providers whose spending is between 85 and 90 percent of direct service revenues.

The amended §355.457(c)(3) establishes that the total direct service revenue of the modeled rates is the direct service portion of the rate multiplied by the number of allowable units paid for services provided during the reporting period.

The amended §355.457(c)(3)(A) establishes that Providers whose direct service costs are 90% or more of the direct service revenues will not be subject to repayment under this section.

The amended §355.457(c)(3)(B) sets forth the repayment requirements for providers whose direct service costs are less than 85% of the direct service revenues.

The amended §355.457(c)(3)(C) sets forth the repayment requirements for providers whose direct service costs are between 85% and 90% of the direct service revenues.

HHSC did not receive any comments regarding the proposed amendment during the comment period, which included a public hearing on February 15, 2005.

The amendment is adopted under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021; the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 9, 2005.

TRD-200501880
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 29, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 424-6900

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TITLE 10. COMMUNITY DEVELOPMENT

PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM DIVISION

CHAPTER 177. PRODUCT DEVELOPMENT AND SMALL BUSINESS INCUBATOR FUND

10 TAC §§177.1 - 177.8

The Product Development and Small Business Incubator Board (board) adopts new Chapter 177, §§177.1 - 177.8, concerning Product Development and Small Business Incubator Fund, relating to the issuance of Product Development and Small Business Incubator bonds authorized by Texas Constitution, Article XVI, §71, and the Product Development and Small Business Incubator Fund loan program authorized by Texas Government Code, Chapter 489, Subchapter D. The Product Development and Small Business Incubator Board is created by Texas Government Code, Chapter 489, Subchapter D, within the Texas Economic Development Bank (bank) in the Office of the Governor, Economic Development and Tourism Division (EDT). Sections

177.3, 177.4, and 177.7 are adopted with changes to the proposed text published in the March 25, 2005, issue of the *Texas Register* (30 TexReg 1719). Sections 177.1, 177.2, 177.5, 177.6, and 177.8 are adopted without changes and will not be republished.

The new rules are necessary to implement a revolving loan program that will loan the proceeds of bonds issued pursuant to Texas Constitution, Article XVI, §71, and Texas Government Code, Chapter 489, Subchapter D. The program will provide financing to aid in the development and production, including the commercialization, of new or improved products in the state. The program will also provide financing to foster and stimulate the development of small business in the state.

Section 177.1 states that the rules apply to the Product Development and Small Business Incubator program.

Section 177.2 defines terms used in the rules.

Section 177.3 sets forth procedures for the board, including provisions for meetings, officers, committees, and public contact with the board. The changes to §177.3 corrected the mailing address for the board, changed a singular term to plural, and added the word "or" at the end of subsection (b)(3)(A). Subsection (d) has been added setting forth administrative procedures related to internal processing of documents under the program.

Section 177.4 sets forth general uses of bond proceeds. The changes to §177.4 deleted the phrase "of the corporation" from subsections (a)(3)(B) and (b)(3)(B) for clarification.

Section 177.5 sets forth general terms for loans made under the program.

Section 177.6 sets forth general application requirements for loans made under the program.

Section 177.7 sets forth general monitoring and reporting requirements for loan recipients. The changes to §177.7 provide that on site monitoring visits will be conducted during normal working hours and with reasonable notice.

Section 177.8 provides that loan recipients will be required to enter into a loan agreement that contains specific terms for the loan, including collateral and repayment requirements.

Comments on the proposed new sections were received from AeA Texas Council (AeA). AeA commented about the scope of the rules, noting that the only plan proposed by EDT was a revolving loan program, while the constitution and the law authorize loans, loan guarantees, and equity investments (for the Product Development Fund) and loans and grants (for the Small Business Incubator Fund). The comment further noted that the type of financing to be offered, including the type of loan program, is within the discretion of the Board. The comment stated, "While the Board has the authority to adopt a revolving loan program, there is no legal requirement that it do so since the law does not require that all money distributed from the sale of bonds, under either fund, be matched dollar-per-dollar in loan repayments. On the contrary, the Texas Constitution makes it clear that the bonds to be issued are 'general obligation bonds,' meaning repayment is guaranteed from funds in the state treasury."

The board agrees with the legal principles stated in the comment, but does not plan to change the rules to expand the program beyond a revolving loan program at this time. The current fiscal environment is one of restraint. While the board recognizes the value of investment in new and emerging technologies and its probable long-term positive effect on the economy, it must balance the needs of companies that can develop and promote those technologies with the overall needs of the people of the state, and recognize that tax dollars may not be an appropriate source of repayment for the bonds at this time.

Although the constitutional amendment authorizing the bonds was passed in 1989 and a program enacted shortly thereafter, the program was not used, largely due to budget concerns. The board wishes to implement the program in a fiscally responsible manner by issuing security-backed, self-supporting bonds that will allow the board to carry out its duty of financing the development of emerging technologies without risking state assets. The vehicle identified for this purpose was a revolving loan program. Over time, as loans are repaid and the program has demonstrated that it generates continuing assets, the board can and may consider alternative financing options and can amend its rules accordingly.

AeA commented that §177.4(a)(3)(A) of the rules should be changed because it states that the bond proceeds may be used to fund loans and does not mention loan guarantees or equity investments. The board disagrees with the comment for the reasons stated above and §177.4(a)(3)(A) has not been changed.

AeA also commented that §177.4(a)(3)(B) should be changed because it states that loan proceeds may be used to refund or redeem outstanding bonds of the corporation, without defining "corporation." The board agrees with the comment and has deleted the words "of the corporation" in §177.4(a)(3)(B).

AeA commented that §177.4(b)(3)(A) of the rules should be revised to allow the board to offer all forms of financing permitted by law because it states that the bond proceeds may be used to fund loans and does not mention grants. The board disagrees with the comment for the reasons stated above and §177.4(b)(3)(A) has not been changed.

AeA also commented that §177.4(b)(3)(B) should be changed because it states that loan proceeds may be used to refund or redeem outstanding bonds of the corporation, without defining "corporation." The board agrees with the comment and has deleted the words "of the corporation" in §177.4(b)(3)(B).

AeA commented that §177.4, which states that EDT does not have any obligation to issue, sell, or deliver its bonds, appears to contradict Government Code, §489.211(c) and §489.212(c), which state that the bank "*shall* provide financing" from the product fund and small business fund, respectively. (Emphasis in original.)

The board disagrees with the comment and the rule has not been changed. Chapter 489 authorizes, but does not require, the program to provide financing to any person or business. Section 177.4(c) states that the board does not have, "any obligation, financial or otherwise, to any person for failure to issue, sell, or deliver its bonds." The language of §489.211(c) and §489.212(c) is set forth below. It makes almost identical provision for the product development fund (§489.211) and the small business fund (§489.212). The differences are indicated in brackets. The sections state:

(c) Money in the program account of the product [small business] fund, minus the costs of issuance of bonds under this subchapter and necessary costs of administering the product [small business] fund, may be used only to provide financing to aid in the development and production, including the commercialization, of new or improved products [foster and stimulate the development

of small businesses] in this state. The bank shall provide financing from the product [small business] fund on the terms and conditions that the bank determines to be reasonable, appropriate, and consistent with the purposes and objectives of the product [small business] fund and this subchapter, for the purpose of aiding in the development and production of new or improved products [fostering and stimulating the development of new or existing small businesses] in this state.

The sections are permissive related to financing. "Money in the program account . . . may be used only to provide financing." The sections are mandatory when addressing the purpose of the permissive financing. "The bank shall provide financing . . . for the purpose of aiding in the development and production of new or improved products [or fostering and stimulating the development of new or existing small businesses] in this state." The rule and the statute are not inconsistent.

AeA commented that §177.5 should be rewritten because the section currently "binds the board arbitrarily to the same terms for each loan agreement, regardless of the applicant, the purpose for which the loan is granted, and other circumstances. This strips the Board of its authority to approve the terms of the financing. . . . This matter should be left to the discretion of the Board in each transaction."

The board disagrees with the comment and the section has not been changed. A primary purpose of the rules is to promote fairness and consistency in awarding loans under the program. The terms set forth in the rules provide a great deal of flexibility while furthering this purpose. Administrative efficiency is a secondary purpose of the goals. The board anticipates a successful and competitive revolving loan program. Under these circumstances, unique, original terms and conditions for each borrower are not practical or desirable because it would slow down the loan process. Finally, the board retains the authority to waive any rule not statutorily imposed upon a showing of good cause. Therefore, the terms set forth in §177.5 do not prevent different terms being established under certain circumstances within the board's discretion.

AeA commented that, based on its comment on §177.5, §177.6 should be reworded to add the phrase, "if applicable" at the beginning of each sentence in paragraphs (6), (8), and (11). The board disagrees with the comment and the rule has not been changed for the reasons stated above for §177.5.

AeA commented that §177.7, relating to monitoring and reporting requirements, should allow for 30 day notification in the event of a user's name change or any other non-material change (ten days in proposed rule) and in the event of a material change (five days in proposed rule). AeA further commented that the language be added stating that "Such visits shall occur during normal working hours, upon reasonable notice, and be conducted in a manner that is consistent with obligations of confidentiality and workplace safety."

The board disagrees with the comment in part and agrees with the comment in part. The five and ten day notifications are recommended because the program will have to respond and adjust quickly to a user change because asset reserves are not expected to be adequate at first to allow the program to absorb the negative impact of some changes. As previously noted, the board may, at its discretion, waive a notification date requirement for good cause shown. The board agrees with the addition of the language related to site monitoring visits and has changed subsection (b) accordingly.

AeA commented that §177.8 should be changed to provide for "Financing Agreements," rather than Loan Agreements, and that the language should be changed to state that the agreements "may include," rather than "will include," the required provisions. The board does not agree with the comment and the rule has not been changed. Previously stated purposes and goals of these rules, including fairness, consistency, and fiscal restraint, weigh in favor of requiring certain basic, standardized loan terms and assurances of repayment.

The new sections are adopted pursuant to Texas Government Code, §489.210, which directs the Product Development and Small Business Incubator Board to adopt rules for implementation of the program, and Texas Government Code, Chapter 2001, Subchapter B which prescribes the standards for rulemaking by state agencies.

Texas Government Code, Chapter 489, Subchapter D, is affected by this adoption.

§177.3. Procedures of the Board.

(a) Officers.

(1) The board chair shall be appointed by the Governor.

(A) The chair shall have the duty to generally direct, supervise, or control the business of the board and shall exercise supervisory duties as may be required or given her by the board from time to time.

(B) The chair is hereby authorized to represent, both verbally and in written communications, the official position of the board and the department on issues concerning the fund.

(2) Vice Chair. The vice chair of the board shall have such powers and duties as may be assigned to him by the chair and shall exercise the powers of the chair during any time that the chair is absent or unable to act. During any time that the vice chair is absent or unable to act, either the chair or the vice chair may designate another board member to exercise the powers of the chair.

(3) Secretary. The secretary shall keep or cause to be kept the minutes of all meetings and records of all actions of the board. During any time that the secretary is absent or unable to fulfill his duties, the secretary or the chair may designate another board member to exercise the powers of the secretary.

(4) To the extent permitted by law, the board may designate the chair, any member or members, or staff to act on behalf of the full board.

(b) Committees.

(1) Standing committees of the board. By a majority vote, the board may from time to time establish standing committees to assist the board in carrying out its duties. Such committees will be made up of not less than two and not more than four members of the board, and shall serve the board in an advisory capacity. Standing committees may be established to expire upon a certain term and/or may be dissolved at any time by a majority vote of the board.

(2) Advisory committees. By a majority vote, the board may from time to time establish advisory committees, made up of any individuals and for any legal purpose, to study, advise, make recommendations, and otherwise assist the board in carrying out its duties. Advisory committees may be established to expire upon a certain term and/or may be dissolved at any time by a majority vote of the board.

(3) Special committees, made up of any individuals and for any legal purpose, may be appointed and dissolved at any time by majority vote of the board.

(4) A member of a standing committee, an advisory committee, or a special committee shall serve without compensation, and members shall not be reimbursed for expenses unless reimbursement is deemed necessary and feasible by the board, subject to any applicable limitation on reimbursement provided by the General Appropriations Act or other law.

(c) Meetings.

(1) The board shall hold regular meetings, as called by the chair, at least two times per year.

(2) Public appearances at board meetings. Members of the public may appear before the board regarding any issue under the board's jurisdiction.

(A) Unless otherwise required or instructed by staff, a person or organization wishing to be placed on the board meeting agenda must provide a written statement of such request. The request must identify the name of the presenter(s) and the topic of discussion desired to be discussed, and must be delivered to the office at 221 East 11th Street, Austin, Texas 78701, or mailed to P.O. Box 12428, Austin, Texas 78711-2428, or faxed to (512) 936-0520. The request must include a contact person's name, mailing address, telephone number, and fax number, if available.

(B) Within 30 days after receipt of the request, the requestor will be notified of the time and place of the next board meeting for which the requestor may be placed on the agenda and the amount of time scheduled for the requestor's presentation.

(3) Public comment on scheduled agenda items. Members of the public may comment on scheduled agenda items as determined by the board, consistent with the Texas Open Meetings Act.

(A) Members of the public who wish to speak on a scheduled board agenda item must complete a comment sheet, identifying the presenter and the item to be addressed, prior to board discussion on the item. Comment sheets will be available to members of the public prior to and during board meetings.

(B) The chairman will recognize the presenter at the point in the agenda where the comments are most relevant and may determine an appropriate amount of time for the presentation. The board may further limit presentations at any time in accordance with the Act.

(4) To the greatest extent practicable and where consistent with the Texas Open Meetings Act, meetings shall proceed in accordance with Robert's Rules of Order. In the event a point of order is raised with respect to any process or action of the governing board, a determination regarding the validity of the process or action shall be within the discretion of the Governor's General Counsel division.

(5) Meeting accessibility. Any disabled or non-English speaking person who requires assistance in order to attend a board meeting will be reasonably accommodated whenever possible. Any person requiring an accommodation must contact the bank as set out in paragraph (2)(A) of this subsection.

(6) Written communication with the Board. Applications and other written communications regarding the program should be addressed to the attention of the Office of the Governor, Economic Development and Tourism Division, Texas Economic Development Bank, Attn: Product Development and Small Business Incubator Program, Post Office Box 12428, Austin, Texas 78711-2428.

(d) Responsibilities of the Board and Bank.

(1) The board will develop and implement policies that separate the policy-making responsibilities of the board and the management responsibilities of the office, the bank, and the executive director of the office. In addition, the board shall:

(A) approve bonds issued for the program;

(B) review and approve financing documents, loan applications, and loan agreements presented to it by the bank; and

(C) exercise any powers necessary and reasonable to implement the program.

(2) The bank, as staffed by the executive director of the office, will carry out administrative duties related to the bonds and the program and carry out any duties and responsibilities reasonable and necessary to implement the program. In addition, in accordance with the bond resolution, the bank shall:

(A) review and approve financing documents, including but not limited to financing agreements, funds management agreements, loan agreements, and official statements; and

(B) approve loan applications.

(C) Financing documents and other agreements executed by the bank will be signed by the governor's chief of staff or other designee of the governor, as applicable, according to the internal policies of the governor's office.

(3) The bonds shall be issued as Texas Economic Development Bank, State of Texas, General Obligation Variable Rate Demand Bonds, with program and series designations to be added as set forth in the bond resolution.

(A) The bonds will be executed on behalf of the state by the governor with his/her manual or facsimile signature.

(B) The bonds shall be authorized by resolution of the board; the resolution shall be approved as to form by the governor's chief of staff or other designee on behalf of the bank and the executive director on behalf of the office.

(C) Bonds issued by the bank for the program shall be a public security issued by a state agency for purposes of Government Code, Chapters 1201, 1202 and 1371.

(D) All issuances of bonds under the program shall be subject to review and approval by the Bond Review Board and the attorney general.

§177.4. Bonds.

(a) Use of product development bond proceeds. The proceeds of the product development bonds may be used:

(1) to fund reasonably required reserve accounts.

(2) to pay costs incurred in issuing the bonds; and

(3) to either:

(A) fund loans made by the bank to an applicant to provide financing to aid in the development and production, including the commercialization, of new or improved products in this state; or

(B) refund or redeem all or part of any outstanding bonds.

(b) Use of small business incubator bond proceeds. The proceeds of the small business incubator bonds may be used:

(1) to fund reasonably required reserve accounts.

(2) to pay all costs incurred in issuing the bonds; and

(3) to either:

(A) fund loans made by the bank to an applicant to provide financing to foster and stimulate the development of small businesses in this state; or

(B) refund or redeem all or part of any outstanding bonds.

(c) In no event shall the board, the governing body, the office, or the unit have any obligation, financial or otherwise, to any person for failure to issue, sell, or deliver its bonds.

§177.7. Monitoring and Reporting Requirements.

(a) Any user under the program will be required to meet reporting and compliance requirements, as set out in the agreement between the user and the bank, including, but not limited to:

(1) annual submission of audited fiscal year end financial statements;

(2) annual update, including but not limited to efforts and progress toward commercialization;

(3) the use of money distributed through either fund;

(4) notification within 10 days of a user's name change or any other non-material change in the user's product or business;

(5) notification in advance of any anticipated material change to the user's product or business; and

(6) notification within five days of any material change to the user's product or business.

(7) In the event of a name change, sale, or assumption, or similar change, notification to the bank must include a copy of the certificate of amendment to the articles of incorporation, and/or the d/b/a statement under which the user operates, filed with the Texas Secretary of State, as applicable.

(b) Projects may be subject to on site monitoring visits, by the board, the bank or its designee. Such visits shall occur during normal working hours, upon reasonable notice, and be conducted in a manner that is consistent with obligations of confidentiality and workplace safety.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 9, 2005.

TRD-200501876

Mae C. Jemison, M.D.

Chair

Office of the Governor, Economic Development and Tourism Division

Effective date: May 29, 2005

Proposal publication date: March 25, 2005

For further information, please call: (512) 936-0181

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 59. CONTINUING EDUCATION REQUIREMENTS

16 TAC §59.3

The Texas Department of Licensing and Regulation ("Department") adopts amendments to 16 Texas Administrative Code §59.3, regarding continuing education requirements, as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 458) with changes from the rule as proposed.

Texas Occupations Code, §51.405 requires the Texas Commission of Licensing and Regulation ("Commission") to recognize, prepare, or administer continuing education programs for license holders. In response to this legislative mandate, the Commission adopted rules at 16 Texas Administrative Code Chapter 59 to establish general requirements for continuing education providers and courses. The chapter contains rules of general applicability that previously applied only to the electrician program but eventually would apply to all occupations regulated by the Department that are subject to a continuing education requirement.

The amendments to §59.3 add the following programs to the coverage of Chapter 59: (1) auctioneers and associate auctioneers and (2) air conditioning and refrigeration contractors. This amendment is necessary because the Commission is adopting rules with continuing education requirements that are specific to these two programs. Based on staff recommendation, the rule has been revised from the proposed version to eliminate the reference to the licensed court interpreter program. A reference to that program is unnecessary because currently there is no proposed or adopted continuing education rule for the program. Although the Licensed Court Interpreter Advisory Board has met and considered a possible continuing education rule, the Board has not recommended such a rule to the Commission at this time.

The amendments will allow providers of continuing education for these programs to begin registering with the Department and obtaining approval of courses. The provisions of Chapter 59, including fee provisions, would apply to these programs. Continuing education requirements that are specific to each of these programs are contained in the rules for the respective programs. This rule amendment is necessary to implement Texas Occupations Code, §51.405 with respect to the referenced programs.

The Department drafted and distributed the proposal to persons internal and external to the agency. The proposal was published in the *Texas Register* on February 4, 2005. The comment period closed on March 4, 2005. No public comments were received regarding the proposed amendments.

The amendments are adopted under Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 1302, and 1802. No other statutes, articles, or codes are affected by the adoption.

§59.3. Purpose and Applicability.

These rules are promulgated to establish continuing education provider and course requirements for the following occupations regulated by the Department of Licensing and Regulation:

(1) Air conditioning and refrigeration contractors, as provided by Texas Occupations Code, Chapter 1302. Additional continuing education requirements relating to air conditioning and refrigeration contractors may be found in Chapter 75 of this title.

(2) Auctioneers and associate auctioneers, as provided by Texas Occupations Code, Chapter 1802. Additional continuing education requirements relating to auctioneers and associate auctioneers may be found in Chapter 67 of this title.

(3) Electricians, as provided by Texas Occupations Code, Chapter 1305. Additional continuing education requirements relating to electricians may be found in Chapter 73 of this title.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 12, 2005.

TRD-200501930
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: June 1, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 463-7348

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CHAPTER 67. AUCTIONEERS

16 TAC §67.25

The Texas Department of Licensing and Regulation ("Department") adopts new 16 Texas Administrative Code §67.25, concerning continuing education requirements relative to the auctioneer program for licensees, providers, and courses as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 459) with changes from the rule as proposed.

Texas Occupations Code, §51.405, requires the Texas Commission of Licensing and Regulation ("Commission"), to recognize, prepare, or administer continuing education programs for license holders, and a license holder must participate in the programs to the extent required by the Commission to keep the person's license. The new rule implements this statutory requirement in the auctioneer program and establishes requirements that are specific to the auctioneer program, for licensees, providers, and courses. General requirements for continuing education providers and courses are contained in 16 Texas Administrative Code Chapter 59.

The new rule requires an auctioneer or associate auctioneer to complete six hours of continuing education in Department-approved courses to renew a license. The rule requires that the continuing education hours must include two hours of instruction in laws and rules that regulate the conduct of auctioneers and associate auctioneers. The hours must be completed during the term of the current license or, in the case of a late renewal, within the one-year period prior to the date of renewal. A licensee may not receive credit for attending the same course more than once for one renewal period. A licensee is required to retain a copy of the certificate of completion for one year after the date of completion of the course. The rule requires that a provider's course must cover one or more specified topics to be approved by the Department. The rule applies to providers and courses upon the effective date of the rule. The rule applies to auctioneer and associate auctioneer licenses that expire on or after January 1, 2006.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the *Texas Register* on February 4, 2005. The comment period closed on March 4, 2005. Thirty-seven comments were received regarding the proposed rule.

A number of commenters, including the Texas Auctioneers Association, generally were in support of the rule but objected to the requirement of the proposed rule that a licensee's continuing education hours must include two hours of instruction in Texas law and rules. These commenters noted that some Texas licensees hold auctioneer licenses in other states. The Texas law and rules requirement would make it difficult for these licensees to satisfy continuing education requirements in other states and in Texas. Many commenters suggested removing the word "Texas" from proposed §67.25(b). One commenter suggested eliminating any specific requirements for content of continuing education. Based on these comments, the rule has been revised to eliminate the requirement that the two hours of laws and rules must pertain specifically to Texas.

The revised rule also allows an approved continuing education course to cover laws and rules, other than the Texas auctioneer law and rules, that regulate the conduct of auctioneers and associate auctioneers. These changes should ease the burden of compliance with the rule for those licensees who hold licenses in multiple states. However, the Commission does not believe that eliminating the content requirements for continuing education is appropriate because such requirements are necessary to ensure that continuing education is relevant and useful to licensees.

Several comments were opposed to the rule. These commenters objected to the cost imposed on a licensee in obtaining continuing education and expressed that continuing education was unnecessary for auctioneers. However, the Auctioneer Education Advisory Board, which exists to advise the Commission on such matters, concluded that a continuing education requirement was needed and recommended the proposed rule. The Commission believes that continuing education will support and enhance the skills and competence of licensees and thereby afford additional protection to the public. In addition, the Commission has a statutory directive to administer continuing education programs for license holders and to require licensees to participate in those programs. For these reasons, the Commission is proceeding with adoption of the rule. In response to these comments though, the date on which licensees must comply with continuing education requirements has been extended. The revised rule would apply to licensees whose licenses expire on or after January 1, 2006. This change should ease the burden of compliance with the new requirements by allowing licensees additional time to obtain continuing education hours.

One commenter suggested adding a "grandfathering" provision that would exempt a licensee from continuing education requirements if the licensee had held a license for a certain number of years. Because continuing education would be beneficial to all licensees, no change has been made to the rule based on this comment.

The new rule is adopted under Texas Occupations Code, Chapter 1802 and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. In particular, the rule implements Texas Occupations Code, §51.405.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 1802. No other statutes, articles, or codes are affected by the adoption.

§67.25. Continuing Education.

(a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.

(b) To renew a license as an auctioneer or associate auctioneer, a licensee must complete six hours of continuing education in courses approved by the department, including two hours of instruction in laws and rules that regulate the conduct of auctioneers and associate auctioneers.

(c) The continuing education hours must have been completed within the term of the current license, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the one year period immediately prior to the date of renewal.

(d) A licensee may not receive continuing education credit for attending the same course more than once for one renewal period.

(e) A licensee shall retain a copy of the certificate of completion for a course for one year after the date of completion. In conducting any inspection or investigation of the licensee, the department may examine the licensee's records to determine compliance with this subsection.

(f) To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:

(1) Texas Occupations Code, Chapter 1802, Auctioneers;

(2) Title 16, Texas Administrative Code, Chapter 67, Auctioneers Administrative Rules;

(3) other laws and rules that regulate the conduct of auctioneers and associate auctioneers;

(4) auction-related laws, such as the Uniform Commercial Code--Sales, Title 1, Chapter 2, Texas Business and Commerce Code §2.328 and the Deceptive Trade Practices--Consumer Protection Act, Chapter 17, Subchapter E, Texas Business and Commerce Code; or

(5) business practices, such as insurance, auction ethics, contracts, maintenance of trust accounts, and marketing.

(g) This section shall apply to providers and courses for auctioneers and associate auctioneers upon the effective date of this section.

(h) This section shall apply to auctioneer and associate auctioneer licenses issued under Texas Occupations Code, Chapter 1802, Subchapter B that expire on or after January 1, 2006.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

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CHAPTER 75. AIR CONDITIONING AND REFRIGERATION CONTRACTOR LICENSE LAW

16 TAC §75.25

The Texas Department of Licensing and Regulation ("Department") adopts new rule 16 Texas Administrative Code §75.25, concerning continuing education requirements relative to the air conditioning and refrigeration contractors program for licensees, providers, and courses as published in the February 25, 2005, issue of the *Texas Register* (30 TexReg 1005), without changes, and will not be republished.

Texas Occupations Code, §51.405, requires the Texas Commission of Licensing and Regulation ("Commission"), to recognize, prepare, or administer continuing education programs for license holders, and a license holder must participate in the programs to the extent required by the Commission to keep the person's license. The new rule implements this statutory requirement in the air conditioning and refrigeration contractor program. The new rule establishes requirements that are specific to the air conditioning and refrigeration contractor program, for licensees, providers, and courses. General requirements for continuing education providers and courses are contained in 16 Texas Administrative Code Chapter 59.

The new rule requires a licensee to complete eight hours of continuing education in Department-approved courses to renew a license. The continuing education hours must include two hours of instruction in Texas state law and rules which regulate the conduct of licensees and must be completed during the term of the current license or, in the case of a late renewal, within the one-year period prior to the date of renewal. A licensee may not receive credit for attending the same course more than once. A licensee is required to retain a copy of the certificate of completion for one year after the date of completion of the course. The rule requires that, to be approved by the Department, a provider's course must cover one or more specified topics. The rule applies to providers and courses upon the effective date of the rule. The rule applies to air conditioning and refrigeration contractor licenses that expire on or after January 1, 2006.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the *Texas Register* on February 25, 2005. The comment period closed on March 28, 2005. Five comments were received regarding the proposed rule.

One commenter suggested adding a requirement that the continuing education hours include at least three hours in code training. The proposed rule requires two hours of instruction in Texas law and rules that regulate the conduct of licensees. The law and rules make reference to the codes that apply to this occupation, so a course that covers the law and rules topic may also include some coverage of code requirements. In addition, the list of acceptable topics that may be covered in a continuing education course includes the applicable codes. The Air Conditioning and Refrigeration Contractors Advisory Board, which is a body that exists to advise the Commission on issues related to this occupation, has recommended this rule. The Board has determined that the continuing education requirements of the rule are sufficient, and the Commission agrees with that determination. No change has been made based on this comment.

Two of the comments were opposed to the rule. These commenters expressed that continuing education was unnecessary

and objected to the increased costs to government of administering the rule. However, the Air Conditioning and Refrigeration Contractors Advisory Board has concluded that a continuing education requirement is needed and has recommended this rule. The Commission believes that continuing education, as required by the rule, will support and enhance the skills and competence of licensees and thereby afford additional protection to the public. In addition, the Commission has a statutory directive to administer continuing education programs for license holders and to require licensees to participate in those programs. This program, in itself, is not expected to create significant additional costs to the Department. The Commission believes that the staff will be able to administer the program in an efficient, cost-effective manner. For these reasons, the Commission does not agree with these comments and makes no change to the rule based on these comments.

One commenter supported the rule but expressed the view that the rule would not curtail unlicensed activity. The Commission agrees with the commenter's concern about unlicensed activity. The Department's enforcement staff is continually working to address unlicensed activity, through such activities as sting operations and complaint resolution. This rule, however, is not intended primarily to address unlicensed activity but rather is designed to support and enhance the skills and competence of licensees. No change has been made based on this comment.

One commenter requested clarification of the number of continuing education hours required by the rule. This commenter did not express a position for or against the rule and did not suggest any changes to the rule, so no change has been made based on this comment.

The new rule is adopted under Texas Occupations Code, Chapter 1302 and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. In particular, the rule implements Texas Occupations Code, §51.405.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 1302. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.315

The Texas Lottery Commission adopts amendments to 16 TAC §401.315, relating to the "Mega Millions" on-line game, without changes to the proposed text as published in the March 25, 2005, issue of the *Texas Register* (30 TexReg 1761).

The amendments change the game matrix from 5 of 52 and 1 of 52 to 5 of 56 and 1 of 46. The amendments change the minimum grand/jackpot amount from $10 million to $12 million. The amendments also change the second prize level from $175,000 to $250,000 and the third prize level from $5,000 to $10,000. Additionally, the odds of winning for each prize category as well as the overall odds of winning change. For the grand/jackpot prize category, the odds of winning and the percent of prize fund change from 1:135,145,920 and 63.38% to 1:175,711,536 and 63.6%, respectively. For the second prize category, the odds of winning and the percent of prize fund change from 1:2,649,920 and 13.21% to 1:3,904,701 and 12.8%, respectively. For the third prize category, the odds of winning and the percent of prize fund change from 1:575,089 and 1.74% to 1:689,065 and 2.90%, respectively. For the fourth prize category, the odds of winning and the percent of prize fund change from 1:11,276 and 2.66% to 1:15,313 and 1.96%, respectively. For the fifth prize category, the odds of winning and the percent of prize fund change from 1:12,502 and 2.40% to 1:13,781 and 2.18%, respectively. For the sixth prize category, the odds of winning and the percent of prize fund change from 1:833 and 2.40% to 1:844 and 2.38%, respectively. For the seventh prize category, the odds of winning and the percent of prize fund change from 1:245 and 5.71% to 1:306 and 4.58%, respectively. For the eighth prize category, the odds of winning and percent of prize fund change from 1:152 and 3.96% to 1:141 and 4.26%, respectively. For the ninth prize category, the odds of winning and the percent of prize fund change from 1:88 and 4.54% to 1:75 and 5.34%, respectively. The amendments also change provisions throughout the rule that refer to the number of numbers in either field of numbers. Also, language is added that provides that if the sales support a jackpot that is at least $12 million lower than the advertised jackpot, the resulting jackpot to be paid will be the highest fully funded million plus $12 million or the advertised jackpot, whichever is lower. In no event, however, shall the jackpot paid be less than the advertised jackpot of the immediately prior drawing.

The amendments are adopted, in large part, to implement the addition of another state to the Mega Millions game, California. The addition of the population of California to the existing population base of the game may lead to lower jackpot levels unless the game matrix is changed and the odds of winning the grand/jackpot prize are changed. Mega Millions is attractive to players because of the high jackpot levels the game can generate. Texas' actual sales history illustrates that Mega Millions is viewed as a triple-digit jackpot game in the state. In Texas, Mega Millions average per capita sales increase as the Mega Millions jackpot increases. The proposed changes will cause the game to continue to offer high jackpot prize levels to players. Retailers will benefit because they will be receiving additional monies from the additional Mega Millions sales. The State of Texas will receive additional revenue from the additional Mega Million sales. Other changes to the game's prize levels are intended to offer prizes at the lower levels that are attractive to the player base. The change to the language that provides that if the sales support a jackpot that is at least $12 million lower than the advertised jackpot, the resulting jackpot to be paid will be the highest fully funded million plus $12 million or the advertised jackpot, whichever is lower and

that in no event, however, shall the jackpot paid be less than the advertised jackpot of the immediately prior drawing is intended to address unforeseen situations where anticipated sales do not meet actual sales levels. The language limits the jackpot prize liability in these unforeseen situations.

The Commission received comments on the proposed amendments to §401.315. Comment was received at a public comment hearing conducted on April 7, 2005 and also in writing. One commenter appeared at the public comment hearing. This commenter indicated that she was offering comment in both a representative capacity and in an individual capacity. This commenter is opposed to the proposed changes to the Mega Millions game. The commenter indicated that the odds increase is a 30% increase in the odds and that there will not be a corresponding 30% increase in sales. The commenter indicated opposition to the guaranteed prizes and believes it is not fair to the people and it is a risk to the State. The commenter believes that the Commission keeps the excess money from the allocation of the amount needed to fund low tier prizes and that the players should get the money. The commenter also indicated that the jackpot is a guaranteed prize and since Texas joined there have only been two wins where there were insufficient funds from sales to fund the prize and money from the reserve was used to pay the jackpot prizes. The commenter also indicated that the jackpot prize money from the two jackpots in Texas is leaving the State. The commenter indicated that the game does not allow players to choose between cash value option or annual payment after they win. The commenter expressed criticism regarding the manner in which the Commission notified persons of the subject rulemaking. The commenter indicated that she believes the Commission has already agreed to pay for balls and machines in connection with the subject rulemaking.

The majority of commenters commented on two points. The first point is an opposition to the proposed amendment to the Mega Millions rule that will increase the odds of winning the jackpot. Commenters believe the odds are already too high and that it makes it harder to win. Commenters indicated that the public would rather have more people win as opposed to larger jackpots and want the game to be easier to win, even at the lower levels. Commenters also indicated that every time the odds are raised, less people play and it stops being fun to play. Further comment is that the short-term gain of additional players for $300 million plus jackpots will soon vanish and reality will force most casual players to other venues. As a result, the change could substantially erode the current player base and force a slowing of jackpot growth. The majority of the commenters' second point is to leave the Mega Millions game alone. The commenters indicated that they thought the game could not be changed, they like the current format, adding more numbers is bad for the game, changing the game ruins the game, and changing the game to make it harder to win loses players. Some commenters indicated that the Commission and/or the State are just too greedy. Some commenters indicated the game is crooked and/or that the Commission is crooked. One commenter does not like the multiplier feature and wants to eliminate it. This commenter also wants the Megaplier animation eliminated and replaced with a mechanical drawing system to eliminate tampering. One commenter wants to be able to decide whether to have the prize paid in a lump sum or in installments after they win. One commenter indicated that Texas should raise money through casino gambling. Several commenters were in favor of the amendments. One commenter indicated that gambling has odds and it is up to the player to make that choice to play.

Agency response to the comment: The agency recognizes that the changes to the rule changes the odds of winning the jackpot amount. For the grand/jackpot prize category, the odds of winning and the percent of prize fund change from 1:135,145,920 and 63.38% to 1:175,711,536 and 63.6%, respectively. However, the Mega Millions game was designed to provide high jackpot amounts. The addition of the newest state to the game, California, means more players. With more players, if the matrix is not changed to recognize the increase in the population playing the game, it is unlikely that the game will reach the high jackpots it previously has experienced. Players play at the higher jackpot levels. Therefore, the agency disagrees with the comments to leave the game alone, not change the odds of winning at the jackpot level, changing the game ruins the game, and that changing the game could erode the player base. Likewise, the Commission disagrees with the comment that the Commission and/or the State are just too greedy. The purpose of State lottery games is to generate revenue for public programs. In Texas, the proceeds are transferred to the Foundation School Fund. The Commission's responsibility is to maximize revenues through lottery games for such purpose. It is not a question of "greediness," it is an issue of generating funds for such purpose. The agency does not agree with the comment that guaranteed prizes are unfair to players or a risk to the State. Guaranteed prizes are a part of the Mega Millions game. Players are aware of this prize structure when they play. Players are not required to purchase a ticket in the Mega Millions game. Participation in this lottery game is the choice of the player. The overall payout in the game is approximately 50%. Therefore, over time, the revenue returned to the State should be within the anticipated range. The Commission also disagrees with the comment regarding the Mega Millions jackpot prize claimed in Texas being funded, in part, from a prize reserve fund. The Mega Millions game does not include such a fund. The agency also disagrees with the comment regarding prize money leaving the State. The comment referenced two jackpot prizes won, one in Mega Millions and one in Lotto Texas as examples of the prizewinners spending prize money outside Texas. The Commission imposes no restrictions on how a person spends his prize money and, further, is uncertain as to its authority, should it even desire to do so, to impose a restriction that prize money must be spent in Texas. The Commission also disagrees with the comment regarding the manner in which the Commission notified persons of this rulemaking. The Commission has complied with the rulemaking notification requirements of the Administrative Procedures Act, Chapter 2001, Government Code. Additionally, the Commission noticed a public comment hearing and posted information about the rulemaking on its website. The agency also disagrees with the comment that the Commission had already agreed to purchase equipment to implement the game change contemplated by this rulemaking. The Executive Director has executed the contract that includes the newest state, California; but, the Commission, should it decide to do so, could elect to withdraw from the game. The rulemaking does implement the game change but comment received in connection with the rulemaking has been considered and had the Commission received comment that it thought required either adoption with changes to the proposed text or withdrawal of the proposed amendments, it could have taken such action. The Commission disagrees with the comment that the Commission and/or the game, including the multiplier automated drawing, are crooked. Both are subject to independent audit and review. The Commission also disagrees with the comment to allow a player to elect whether to be paid in a lump sum or in installments at the time the player claims the prize since the Commission believes

there has been no dispositive ruling from the Internal Revenue Service regarding the time lines in the federal statute relating to this matter. Lastly, the Commission disagrees with the comment to eliminate the multiplier feature. To date, the multiplier feature has generated $33,962,682 in additional revenue for the Foundation School Fund since the inception of the game through April 30, 2005.

The Commission did not receive comments from any group or association in favor of the proposed rulemaking. The Commission received comments from The Lotto Report in opposition to the proposed rulemaking.

The amendments are adopted under Government Code, §466.015 which authorizes the Commission to adopt all rules necessary to administer the State Lottery Act and to adopt rules governing the establishment and operation of the lottery, under Government Code, §466.451 which authorizes the Commission to adopt rules relating to multijurisdiction lottery game or games, and under Government Code, §467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The amendments implement Government Code, Chapter 466 and specifically, Government Code, §466.451.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 11, 2005.

TRD-200501906
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: June 22, 2005
Proposal publication date: March 25, 2005
For further information, please call: (512) 344-5113

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1005

The Texas Education Agency (TEA) adopts new §97.1005, concerning accountability and performance monitoring. The new section is adopted without changes to the proposed text as published in the April 1, 2005, issue of the *Texas Register* (30 TexReg 1896) and will not be republished. The adopted new §97.1005 describes the Performance-Based Monitoring Analysis System (PBMAS) and adopts applicable excerpts of the PBMAS 2004-2005 Manual, dated December 14, 2004.

House Bill 3459, 78th Texas Legislature, 2003, added TEC, §7.027, limiting compliance monitoring done by the Texas Education Agency to that required to ensure school district and charter school compliance with federal law and regulations; financial accountability, including compliance with grant requirements; and data integrity for purposes of the Public Education Information Management System (PEIMS) and accountability under TEC, Chapter 39. The intent of this change was to limit and redirect monitoring efforts. To meet this requirement, the agency developed the PBMAS, which is used in conjunction with other evaluation systems, to monitor performance and program effectiveness of special programs in school districts and charter schools. Agency legal counsel has determined that the commissioner of education should take formal rulemaking action to place into the Texas Administrative Code procedures related to the PBMAS. The intention is to annually update the rule to incorporate provisions for the most recent PBMAS manual.

The adopted new 19 TAC §97.1005 describes the purpose of the PBMAS and manner in which school district and charter school performance will be reported. The adopted new rule also adopts excerpts of the PBMAS 2004- 2005 Manual that describe specific criteria and calculations that will be used to assign performance levels. The commissioner will establish specific criteria and calculations annually and communicate that information to school districts and charter schools. The adoption will establish in rule the procedures for the PBMAS. Applicable procedures will be adopted each year as annual versions of the PBMAS manual are published.

The following is a summary of public comments received on the proposed new 19 TAC §97.1005 and corresponding agency responses.

Comment. The Texas Classroom Teachers Association (TCTA) recommended changing the No Child Left Behind Indicator #4 (Highly Qualified Teachers) to be the state percentage of teachers who are highly qualified who are required to be highly qualified in 2003-2004. TCTA recommended deleting Special Education Indicator #10 (Special Education Discretionary Disciplinary Alternative Education Program Placements) and Special Education Indicator #12 (Special Education Discretionary Removals to In-School-Suspension) because of a concern that if districts are evaluated under PBMAS for disproportionate removals of special education students to disciplinary alternative education programs and in-school-suspension, districts will return "a student removed by a teacher from the class to that same teacher's class" without resolving the issue of "teachers who can't get help and support implementing an individualized education program (IEP)."

Agency response. The agency disagrees in part and agrees in part. Changing the components of the 2004-2005 PBMAS is not possible since the system has already been released. However, the agency agrees to consider the suggestions as part of the development of future versions of the PBMAS.

Comment. The TCTA also recommended adding five new indicators to PBMAS: 1) an indicator "showing whether the district has a procedure in place as required by Texas Administrative Code §89.1075;" 2) an indicator "showing large numbers of admission, review, and dismissal (ARD) committee overrides of teachers' refusal to allow a special education student to return to his/her class;" 3) an indicator "regarding the number of special education students being taught by a teacher who is not appropriately certified for the assignment;" 4) an indicator "regarding the class sizes of classes with special education students in them;" and 5) an indicator "regarding the number of complaints filed with the Texas Education Agency by staff (and other parties) regarding special education."

Agency response. The agency disagrees in part and agrees in part. Changing the components of the 2004-2005 PBMAS is not possible since the system has already been released. However, the agency agrees to consider the suggestions as part of the development of future versions of the PBMAS.

Comment. The Vidor Independent School District director of special programs provided a comment and a recommendation concerning the performance-based monitoring compliance review, two recommendations concerning random selection for performance-based monitoring interventions, and a recommendation concerning the Public Education Information Management System (PEIMS).

Agency response. The agency appreciates these recommendations and comments; however, they are outside of the scope of this particular rule adoption, which is limited to the adoption of applicable excerpts of the PBMAS 2004-2005 Manual, dated December 14, 2004.

The new section is adopted under the Texas Education Code, §7.027, which authorizes the agency to monitor as necessary to ensure school district and charter school compliance with state and federal law and regulations.

The new section implements the Texas Education Code, §7.027.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2005.

TRD-200501957
Cristina De La Fuente-Valadez
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Texas Education Agency
Effective date: June 5, 2005
Proposal publication date: April 1, 2005
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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.11

The Texas State Board of Examiners of Psychologists adopts amendments to §461.11 concerning Continuing Education without changes to the proposed text as published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1399).

The amendments are being adopted in order to clarify continuing education documentation requirements.

The adopted amendments will make the rule easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2005.

TRD-200501947
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: June 5, 2005
Proposal publication date: March 11, 2005
For further information, please call: (512) 305-7700

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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.9

The Texas State Board of Examiners of Psychologists adopts amendments to §465.9 concerning Competency without changes to the proposed text as published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1399).

The amendments are being adopted in order to impose on licensees the duty to recognize where conflicts or problems would prevent the timely completion of services and suggests the appropriate remedial measures when the interruption occurs.

The adopted amendments will make the rule easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee
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Effective date: June 5, 2005
Proposal publication date: March 11, 2005
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22 TAC §465.11

The Texas State Board of Examiners of Psychologists adopts amendments to §465.11 concerning Informed Consent/Describing Psychological Services with changes to the proposed text as published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1400).

The amendments are being adopted in order to impose on licensees the duty to inform clients of interruptions in their services that prevent timely and competent completion.

The adopted amendments will make the rule easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§465.11. Informed Consent/Describing Psychological Services.

(a) Licensees obtain and document in writing informed consent concerning all services they intend to provide to the patient, client or other recipient(s) of the psychological services prior to initiating the services, using language that is reasonably understandable to the recipients unless consent is precluded by applicable federal or state law.

(b) Licensees provide appropriate information as needed during the course of the services about changes in the nature of the services to the patient client or other recipient(s) of the services using language that is reasonably understandable to the recipient to ensure informed consent.

(c) Licensees provide appropriate information as needed, during the course of the services to the patient client and other recipient(s) and afterward if requested, to explain the results and conclusions reached concerning the services using language that is reasonably understandable to the recipient(s).

(d) When a licensee agrees to provide services to a person, group or organization at the request of a third party, the licensee clarifies to all of the parties the nature of the relationship between the licensee and each party at the outset of the service and at any time during the services that the circumstances change. This clarification includes the role of the licensee with each party, the probable uses of the services and the results of the services, and all potential limits to the confidentiality between the recipient(s) of the services and the licensee.

(e) When a licensee agrees to provide services to several persons who have a relationship, such as spouses, couples, parents and children, or in group therapy, the licensee clarifies at the outset the professional relationship between the licensee and each of the individuals involved, including the probable use of the services and information obtained, confidentiality, expectations of each participant, and the access of each participant to records generated in the course of the services.

(f) At any time that a licensee knows or should know that he or she may be called on to perform potentially conflicting roles (such as marital counselor to husband and wife, and then witness for one party in a divorce proceeding), the licensee explains the potential conflict to all affected parties and adjusts or withdraws from all professional services in accordance with Board rules and applicable state and federal law. Further, licensees who encounter personal problems or conflicts as described in Rule 465.9(i) that will prevent them from performing their work-related activities in a competent and timely manner must inform their clients of the personal problem or conflict and discuss appropriate termination and/or referral to insure that the services are completed in a timely manner.

(g) When persons are legally incapable of giving informed consent, licensees obtain informed consent from any individual legally designated to provide substitute consent.

(h) When informed consent is precluded by law, the licensee describes the nature and purpose of all services, as well as the confidentiality of the services and all applicable limits thereto, that he or she intends to provide to the patient, client, or other recipient(s) of the psychological services prior to initiating the services using language that is reasonably understandable to the recipient(s).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2005.

TRD-200501949
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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Proposal publication date: March 11, 2005
For further information, please call: (512) 305-7700

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.93

The Texas State Board of Public Accountancy adopts an amendment to §501.93, concerning Responses without changes to the proposed text as published in the April 8, 2005, issue of the *Texas Register* (30 TexReg 2019). The text of the rule will not be republished.

The amendment to §501.93 deletes subsection (e) regarding the location where a party to a contested case may be deposed and adds a new subsection (e) that contains an interpretive comment.

The amendment will function by providing clarification of the rule by removal of a subsection that is not relevant and the addition of an interpretive comment.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 12, 2005.

TRD-200501924

Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Effective date: June 1, 2005
Proposal publication date: April 8, 2005
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CHAPTER 505. THE BOARD

22 TAC §505.1

The Texas State Board of Public Accountancy adopts an amendment to §505.1, concerning Board Seal and Headquarters without changes to the proposed text as published in the April 8, 2005, issue of the *Texas Register* (30 TexReg 2020). The text of the rule will not be republished.

The amendment to §505.1 will describe and illustrate the official seal of the Texas State Board of Public Accountancy.

The amendment will function by clarifying what elements compose the State Board of Public Accountancy's seal.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 12, 2005.

TRD-200501925
Rande Herrell
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Texas State Board of Public Accountancy
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Proposal publication date: April 8, 2005
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CHAPTER 519. PRACTICE AND PROCEDURE
SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §519.6

The Texas State Board of Public Accountancy adopts an amendment to §519.6, concerning Subpoenas without changes to the proposed text as published in the April 8, 2005, issue of the *Texas Register* (30 TexReg 2021). The text of the rule will not be republished.

The amendment to §519.6 will add subsection (c), which specifies that an applicant, certificate, or registration holder, who is the subject of an investigation or who is a party to a contested case, may be deposed by the Board at the Board's offices. Subsection (c) further specifies the reimbursement policy of the Board for a deponent who is neither the subject of an investigation nor a party to a contested case. Subsection (d) adds an interpretive comment stating that this rule should be read in conjunction with §501.93 of this title relating to Responses.

The amendment will function by specifying the location at which a person who is the subject of an investigation or a party to a contested case may be deposed.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 12, 2005.

TRD-200501926
Rande Herrell
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Texas State Board of Public Accountancy
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Proposal publication date: April 8, 2005
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SUBCHAPTER C. PROCEEDINGS AT SOAH

22 TAC §519.41

The Texas State Board of Public Accountancy adopts an amendment to §519.41, concerning Pleadings in Contested Cases without changes to the proposed text as published in the April 8, 2005, issue of the *Texas Register* (30 TexReg 2022). The text of the rule will not be republished.

The amendment to §519.41 will clarify the language required to be included in the complaint filed by the Board with SOAH; the amended language provides that a respondent must file an answer with the Board and provide a copy to SOAH.

The rule will function by improved understanding by the public of where to file a response to any complaint.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 12, 2005.

TRD-200501927

Rande Herrell
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Proposal publication date: April 8, 2005
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 39. PUBLIC NOTICE

SUBCHAPTER I. PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

30 TAC §39.510

The Texas Commission on Environmental Quality (commission or TCEQ) adopts new §39.510 *with changes* to the proposed text as published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11549).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

This rulemaking is based on instructions given at the commission agenda on December 3, 2003. The adopted rule is based on a petition for rulemaking from the Environmental Law and Justice Center on behalf of the Coalition Against Ruffino Trash Transfer Station. The petition was filed on October 17, 2003. This rulemaking requires notification to the public, by municipal solid waste (MSW) owners or operators, of the existence of an inactive MSW facility when a facility has not accepted waste within two years of the issuance of its permit or the permitted MSW facility has stopped accepting waste for two consecutive years.

A corresponding adopted rulemaking, published in this issue of the *Texas Register*, includes changes to 30 TAC Chapter 305, Consolidated Permits.

SECTION DISCUSSION

Adopted new §39.510, Notice Requirements for Inactive Municipal Solid Waste Permit, adds provisions regarding the contents and types of public notice for permitted MSW facilities that have not accepted waste within two years of permit issuance or have stopped accepting waste for at least two consecutive years. The adopted rule requires that notification to the public be overseen by the executive director and that the notification to the public indicate when the permitted facility expects to begin operations. Mailed notice and newspaper notice are required on an annual basis following permit issuance when a facility has not initiated operations or has ceased accepting waste. Additionally, at the owner's or operator's expense, a sign or signs will be required to be placed at the site of the permitted facility declaring that the permit has been issued and stating the manner in which the commission and owner or operator may be contacted for further information. The new requirements are applicable to MSW facility permits issued on or after the effective date of this rule and to MSW facility permits issued before the effective date of this rule. The adopted rule applies to all MSW permitted facilities including landfills, composting facilities, transfer stations, and all other processing facilities. The adopted rule does not apply to registered MSW facilities.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225, because it does not meet the criteria for a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The purpose of this rulemaking is to require public notice for permitted MSW facilities that have not yet begun accepting waste or have stopped accepting waste. The affected regulated community is current and future owners or operators who may have a permitted MSW facility that has not begun accepting waste or has stopped accepting waste. The adopted rule does not create any burdensome new requirements; therefore, it is not anticipated that the rule will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that this adopted rulemaking does not meet the definition of a major environmental rule.

Furthermore, even if the rulemaking did meet the definition of a major environmental rule, the adopted rule is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicable requirements specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted new §39.510 does not meet any of these requirements. First, there are no applicable federal standards that this rule would address. Second, the adopted rule does not exceed an express requirement of state law, because there is no express requirement of state law related to the required public notice for permitted MSW facilities that have not yet begun operations or have stopped accepting waste. Third, the adopted rule does not exceed the commission's obligations to implement its federally approved Subtitle D permit program. Fourth, the commission does not adopt this rule under the general powers of the agency but rather under the authority of Texas Health and Safety Code, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste. This rule is also adopted under the authority of Texas Health and Safety Code, §361.011 and §361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act. Therefore, the commission does not adopt the rule solely under the commission's general powers.

Comments on the draft regulatory impact analysis determination were solicited; however, no comments were received.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the rulemaking and performed an assessment of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The purpose of this rulemaking is to provide notice to the public regarding permitted MSW facilities that have not yet begun accepting waste or have stopped accepting waste. Promulgation and enforcement of the adopted rule is neither a statutory nor a constitutional taking of private real property because the rule does not affect real property.

The adopted rule does not create any new requirements or impose burdens on private real property. Providing greater public notice will benefit the program, the regulated community, the environment, and the general public. The rule does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation, because it does not create more stringent requirements. Therefore, this rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found the rulemaking is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, and therefore, required that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council, and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

Comments on the consistency of this rulemaking with the CMP were solicited; however, no comments were received.

PUBLIC COMMENT

A public hearing for this rulemaking was held on January 11, 2005, in Austin. The comment period closed on January 18, 2005. Written or oral comments were submitted by: City of Dumas (Dumas); City of El Paso (El Paso); Fritz, Byrne, Head & Harrison, LLP (FBHH); Lone Star Chapter of the Solid Waste Association of North America (TXSWANA); Waste Management of Texas, Inc. (WMTX); and an individual.

All commenters either opposed portions of the rulemaking or supported the rulemaking with suggested changes.

RESPONSE TO COMMENTS

TXSWANA supported the basic premise of the rule that provides notice to citizens in the vicinity of permitted, but unutilized MSW facilities.

The commission appreciates TXSWANA's comments and support on the basic premise of the rule.

FBHH commented that §39.510(a) is unclear regarding the time frame for compliance with the three types of notices and requested clarification.

The rule requires that inactive permitted MSW facilities that have not accepted waste for two years after permit issuance or have ceased accepting waste for two consecutive years, notify the executive director, publish newspaper notice, and mail notice in accordance with the rule. This notice is required within two years of the date of permit issuance, within two years of the date of ceasing to accept waste, or the effective date of this rule, whichever is later. For the purposes of this rule, the term "permit issuance" means the date that the permit is issued by the commission or the date of a final, non-appealable decision regarding the permit. Therefore, existing permitted facilities that have not accepted waste for two consecutive years on the effective date of the rule must comply within two years of the effective date of this rule. Existing facilities that have ceased accepting waste must comply within two years of the effective date of the rule or within two years of the date of ceasing to accept waste, whichever is later. Facilities that are issued permits after the effective date of this rule are required to comply within two years of permit issuance or if the facility accepts waste and then ceases waste acceptance, within two years of ceasing to accept waste. Language has been added to §39.510(a) in response to this comment.

WMTX commented that the commission should define the date of "permit issuance" in §39.510 as the date that the permit is issued by the commission, or, if issuance of the permit is challenged, the date of a final, non-appealable decision regarding such challenge.

The commission agrees and has added rule language in response to this comment, which states that for the purposes of this rule, "permit issuance" means the date that the permit is issued by the commission or the date of a final, non-appealable decision regarding the permit.

WMTX and TXSWANA expressed concerns about the requirements of §39.510(a)(5)(E) regarding the requirement for notice to include a statement indicating when construction and operation is expected in the future. They recommended that the rule language make it clear that this is an estimate, that the owner or operator disclose the expected date of construction or operation when, and only when, reasonably foreseeable, and that any such date is in no way binding upon the owner or operator.

The commission agrees and has added language in §39.510(a)(5)(E) in response to this comment, which states that the required notice shall provide an estimated date of when the facility is expected to begin construction and operation.

WMTX and TXSWANA commented that permittees may not be able to contact all landowners despite due diligence as required in the mailed notice requirements in §39.510(a)(3)(A). They recommended that notification to landowners be made by certified mail to the owners within 500 feet as determined by the county tax rolls on the date that the notice is mailed, and that this requirement is satisfied by proof of mailing.

The commission agrees and has added language in §39.510(a)(3) in response to this comment, which states that the mailed notice required by §39.510(a)(3)(A) shall be sent by certified mail. The commission also agrees that a permittee shall rely on county tax rolls or other reliable sources when compiling a list of landowners within 500 feet of a permitted facility and has added this language to the rule.

An individual commented that mailed notice to landowners may create significant difficulties and recommended that the commission record notice in the county deed records at the time the permit is granted in lieu of a mail out. TXSWANA and Dumas commented that the requirements for mailed notice and publication of notice are not cost effective nor are they effective in reaching new residents, and should be eliminated from the rule.

The commission disagrees with this comment. The commission has found that mailed notice is an effective means of providing notice to landowners and this method of providing notice is used frequently by the commission. No changes have been made in response to this comment.

WMTX recommended replacing the word "paralleling" with the word "bordering" or "adjoining" in §39.510(c) to clarify that the requisite signs are required only on property lines lying next to public highways, streets, or roads.

The commission agrees and in response to this comment has made the recommended change to the rule language.

FBHH commented that the time frame with respect to the definition of an inactive MSW facility in §39.510(a) should be expanded from two years to at least three years. FBHH commented that it is not unusual for a permit to be held up on appeal in the Texas courts for up to three years or longer.

The commission disagrees and no changes have been made to the rule in response to this comment. However, the commission has added language to the rule, which explains that for the purpose of this rule, the term "permit issuance" means the date that the permit is issued by the commission or the date of a final, non-appealable decision regarding the permit. This change will address the possibility of permit issuance being delayed through legal action.

FBHH and Dumas commented that §39.510(b) regarding the applicability of inactive permitted MSW facilities is confusing and erroneous. FBHH recommended deletion of the reference to inactive MSW facilities.

The commission agrees and has made the recommended change to the rule in response to this comment.

FBHH and Dumas recommended that the time frame in §39.510(b) be lengthened beyond six months.

The commission disagrees with this comment. Existing permitted facilities will have six months from the effective date of the rule to prepare signs specifying the facility's status. This is adequate time to prepare signs. No changes have been made in response to this comment.

FBHH commented that the requirements of §39.510 are inconsistent with notice requirements for other industries such as industrial and hazardous waste facilities and recommended any notice requirements maintain consistency across all environmental media.

The commission disagrees with this recommendation. The published and mailed notices required by the rule are consistent with existing notice requirements for MSW facilities. The rule language requiring signs is similar to requirements found in the TCEQ's air quality rules. No changes have been made in response to this comment.

STATUTORY AUTHORITY

The new section is adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and Texas Health and Safety Code, §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste.

The adopted new section implements Texas Health and Safety Code, §361.024 and §361.061.

§39.510. Notice Requirements for Inactive Municipal Solid Waste Permit.

(a) This section applies to the owners or operators of inactive permitted municipal solid waste (MSW) facilities, which are those facilities that have not accepted waste within two years of permit issuance or have ceased accepting waste for at least two consecutive years. For the purposes of this section, permit issuance means the date that a permit is issued by the commission or the date of a final, non-appealable decision regarding the permit. This section applies to facilities permitted before, on, or after the effective date of this rule.

(1) Within two years of the date of permit issuance, the date of ceasing to accept waste, or the effective date of this rule, whichever is later, the owner or operator of an inactive MSW facility shall notify the executive director, in writing, that the facility is inactive and that the owner or operator intends to operate the facility in the future. In the event that the owner or operator does not intend to operate the facility, the owner or operator should begin voluntary permit revocation procedures.

(2) Within two years of the date of permit issuance, the date of ceasing to accept waste, or the effective date of this rule, whichever is later, the owner or operator of an inactive permitted MSW facility shall publish notice of intent to operate the facility, at least once, in a newspaper of the largest circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, then the owner or operator shall publish notice in a newspaper of general circulation in the county in which the facility is located or proposed to be located, and such notice may be satisfied by a one-time publication if the publishing newspaper meets the circulation requirements. Thereafter, notice must be published annually in accordance with this paragraph, until the facility begins accepting waste or voluntary permit revocation is requested.

(3) Within two years of the date of permit issuance, the date of ceasing to accept waste, or the effective date of this rule, whichever is later, the owner or operator of an inactive permitted MSW facility shall provide, by certified mail, the notice of intent to operate the facility to:

(A) landowners within 500 feet of the facility property line, as determined by county tax rolls or other reliable sources;

(B) the mayor and health authorities of the city or town in which territorial limits or extraterritorial jurisdiction the facility is located or proposed to be located;

(C) the county judge and health authorities of the county in which the facility is located or proposed to be located; and

(D) the council of governments that serves or covers the area or county in which the facility is located or proposed to be located. Thereafter, notice must be sent annually in accordance with this paragraph, until the facility begins accepting waste.

(4) The owner or operator shall file an affidavit with the executive director certifying facts that constitute compliance with the

notice requirements of paragraphs (2) and (3) of this subsection within 30 days of the last publication of the published notice required by paragraph (2) of this subsection. The owner or operator shall also file a copy of the published notice required by paragraph (2) of this subsection with the executive director that shows the date of publication and the name of the newspaper within ten business days after its publication. The deadline to file a copy of the published notice that shows the date of publication and the name of the newspaper is ten business days after the last date of publication. The deadline to file the affidavit is 30 calendar days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with the public notice requirements of paragraphs (2) and (3) of this subsection creates a rebuttable presumption of compliance with the requirement to publish notice.

(5) The text of the newspaper notice and the mailed notice must include:

(A) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(B) the name, address, and telephone number of the owner or operator and a contact person from whom interested persons may obtain further information and, if different, the location of the facility or activity to be regulated by the permit;

(C) a brief description of the activity authorized by the permit;

(D) the permit number and permit issuance date; and

(E) a statement indicating that the permitted facility may begin construction or operation at a future time, and an estimated date of when the facility is expected to begin construction and operation.

(b) Within six months of the date of permit issuance, the date of ceasing to accept waste, or the effective date of this rule, whichever is later, the owners or operators of permitted MSW facilities that are not receiving waste shall provide signs specifying the facility's status. At the owner's or operator's expense, a sign or signs must be placed at the site of the permitted facility declaring that the permit has been issued and stating the manner in which the commission and owner or operator may be contacted for further information. Such signs must be provided by the owner or operator and must substantially meet the following requirements. Signs must:

(1) consist of dark lettering on a white background and must be no smaller than four feet by four feet with letters at least three inches in height and block printed capital lettering;

(2) be headed by the words "AUTHORIZED MUNICIPAL SOLID WASTE DISPOSAL FACILITY";

(3) include the words "PERMIT NO.", the number of the permit, and the type of permit;

(4) include the words "for further information contact";

(5) include the words "Texas Commission on Environmental Quality" and the address and telephone number of the appropriate commission regional office;

(6) include the name of the owner or operator, and the address of the appropriate responsible official;

(7) include the telephone number of the owner or operator;

(8) include the expected start-up date for beginning operation; and

(9) remain in place and legible until the facility is opened. The owner or operator shall provide a verification to the executive director that the sign posting was conducted according to the requirements of this section.

(c) Each sign placed at the site must be located within ten feet of every property line bordering a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs, shall be required along any property line paralleling a public highway, street, or road. This section's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless the property is part of the permitted facility.

(d) The executive director may approve variances from the requirements of subsections (b) and (c) of this section if the owner or operator has demonstrated that it is not practical to comply with the specific requirements of this subsection and alternative sign posting plans proposed by the applicant are at least as effective in providing notice to the public. Approval from the executive director under this subsection must be received before posting alternative signs for purposes of satisfying the requirements of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 13, 2005.

TRD-200501941
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: June 2, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 239-0348

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CHAPTER 305. CONSOLIDATED PERMITS
SUBCHAPTER F. PERMIT CHARACTERISTICS AND CONDITIONS

30 TAC §305.130, §305.131

The Texas Commission on Environmental Quality (commission or TCEQ) adopts new §305.130 and §305.131 *with changes* to the proposed text as published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11553).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

This rulemaking is based on instructions given at the commission agenda on December 3, 2003. The adopted rules are based on a petition for rulemaking from the Environmental Law and Justice Center on behalf of the Coalition Against Ruffino Trash Transfer Station. The petition was filed on October 17, 2003. This rulemaking requires notification to the public, by municipal solid waste (MSW) owners or operators, of the existence of an inactive MSW facility when a facility has not accepted waste within two years of the issuance of its permit or the permitted MSW facility has stopped accepting waste for two consecutive years.

A corresponding adopted rulemaking, published in this issue of the *Texas Register*, includes changes to 30 TAC Chapter 39, Public Notice.

SECTION BY SECTION DISCUSSION

Adopted new §305.130, Notice of Inactive Municipal Solid Waste Permit, adds provisions requiring public notice as described in adopted new 30 TAC §39.510 for permitted MSW facilities that have not accepted waste within two years of permit issuance or have stopped accepting waste for at least two consecutive years. The adopted rule requires that notification to the public be overseen by the executive director and that the notification to the public indicate when the permitted facility expects to begin operations. Notice is required on an annual basis until the facility starts or resumes accepting waste. The new requirements are applicable to MSW facility permits issued on or after the effective date of the adopted rule and to MSW facility permits issued before the effective date of this rule. The adopted rule applies to all MSW permitted facilities including landfills, composting facilities, transfer stations, and all other processing facilities. The adopted rule does not apply to registered MSW facilities.

Adopted new §305.131, Revocation of Inactive Municipal Solid Waste Permit, provides requirements allowing an MSW permit to be revoked at the discretion of the commission under the procedures found in 30 TAC §305.68 if the owner or operator has failed to provide notice to the public as required by §305.130.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225, because it does not meet the criteria for a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The purpose of this rulemaking is to require public notice for permitted MSW facilities that have not yet begun accepting waste or have stopped accepting waste. The affected regulated community is current and future owners and operators who have a permitted MSW facility that has not begun accepting waste or has stopped accepting waste. The adopted rules do not create any burdensome new requirements; therefore, it is not anticipated that the rules will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that this rulemaking does not meet the definition of a major environmental rule.

Furthermore, even if the adopted rulemaking did meet the definition of a major environmental rule, the rules are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted new §305.130 and §305.131 do not meet any of these requirements. First, there are no applicable federal standards that these rules would address. Second, the adopted rules do not exceed an express requirement of state law, because there is no express requirement of state law related to the required public notice for permitted MSW facilities that have not yet begun operations or have stopped accepting waste. Third, the adopted rules do not exceed the commission's obligations to implement its federally approved Subtitle D permit program. Fourth, the commission does not adopt these rules under the general powers of the agency but rather under the authority of Texas Health and Safety Code, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste. These rules are also adopted under the authority of Texas Health and Safety Code, §361.011 and §361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act. Therefore, the commission does not adopt the rules solely under the commission's general powers.

Comments on the draft regulatory impact analysis determination were solicited; however, no comments were received.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the rulemaking and performed an assessment of whether the adopted rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of this rulemaking is to provide notice to the public regarding permitted MSW facilities that are inactive because they have not accepted waste within two years of the issuance of the permit or they have ceased accepting waste for two consecutive years. Promulgation and enforcement of the adopted rules will be neither a statutory nor a constitutional taking of private real property because the rules do not affect real property.

The adopted rules do not create any new requirements or impose burdens on private real property, because the commission already has the authority to revoke permits. Providing greater public notice will benefit the program, the regulated community, the environment, and the general public. The rules do not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation, because they do not create more stringent requirements. Therefore, this rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The rulemaking is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program. Therefore, the goals and policies of the Texas Coastal Management Program (CMP) must be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council, and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

Comments on the consistency of this rulemaking with the CMP were solicited; however, no comments were received.

PUBLIC COMMENT

A public hearing for this rulemaking was held on January 11, 2005, in Austin. The comment period closed on January 18, 2005. Written or oral comments were submitted by: City of Dumas (Dumas); City of El Paso (El Paso); Fritz, Byrne, Head & Harrison, LLP (FBHH); Lone Star Chapter of the Solid Waste Association of North America (TXSWANA); Waste Management of Texas, Inc. (WMTX); and an individual.

All commenters either opposed portions of the rulemaking or supported the rulemaking with suggested changes.

RESPONSE TO COMMENTS

TXSWANA supported the basic premise of the rule that provides notice to citizens in the vicinity of permitted, but unutilized MSW facilities.

The commission appreciates TXSWANA's comments and support on the basic premise of the rules.

§305.130. Notice of Inactive Municipal Solid Waste Permit.

FBHH commented that §305.130(b) is unclear with respect to the timing of the notifications referenced in §39.510(a). FBHH commented that if, in certain situations, the notification is due on the effective date of the rule, then that would be onerous and recommended that the inactive MSW facility have a certain period of time to provide the notifications.

The commission agrees with this comment and has made changes to §39.510 in an effort to make the rule clear. As revised, the rule does not require any notification on the effective date of the rule.

§305.131. Revocation of Inactive Municipal Solid Waste Permit.

FBHH indicated that the requirements in §305.131(2) and (3) would be inappropriate retroactive rulemaking as applied to currently permitted facilities. FBHH and WMTX commented that the commission does not have the statutory authority to adopt §305.131(2) and (3), unless it could show that the facility is abandoned. FBHH and WMTX commented that if the commission chooses to adopt a revocation rule such as that proposed in §305.131(2) and (3), the agency should provide a sufficient period of time before the revocation requirements go into effect to construct facilities or contract with MSW haulers or generators in order that waste can be accepted.

The commission disagrees that the proposed rule constitutes retroactive rulemaking because the MSW permits are not vested rights. In addition, current TCEQ rules allow for the revocation of a permit at any time for good cause by order of the commission after opportunity for a public hearing is provided. Good cause includes, but is not limited to, abandonment. However, the commission has changed the proposed rule and deleted §305.132(2) and (3) because it is not necessary.

TXSWANA, Dumas, and El Paso commented that the revocation requirements in §305.131 will inhibit adequate long-range planning and do not have sufficient criteria and guidance regarding the commission's discretionary ability. TXSWANA and El Paso recommended that the revocation requirements be removed or, if kept, that the time frame be extended from seven years to fifteen years.

The commission has deleted §305.132(2) and (3) because it is not necessary.

WMTX and Dumas commented that the seven-year time period in §305.131 was chosen arbitrarily, and is also unnecessary because existing rules allow the commission to initiate revocation proceedings "for good cause at any time." They recommended removal of the requirement.

The commission agrees that the proposed language was not necessary because existing rules allow the commission to initiate revocation proceedings at any time for good cause. Therefore, the commission has deleted §305.132(2) and (3) because it is not necessary.

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and Texas Health and Safety Code, §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste.

The new sections implement Texas Health and Safety Code, §361.024 and §361.061.

§305.130. Notice of Inactive Municipal Solid Waste Permit.

(a) The owner or operator of a permitted municipal solid waste (MSW) facility that has not accepted waste within two years of permit issuance or that has ceased accepting waste for two consecutive years shall provide notice to the public as specified in §39.510 of this title (relating to Notice Requirements for Inactive Municipal Solid Waste Permit) of the following:

(1) the permitted facility may begin construction or operation at a future time; and

(2) the date that the facility is expected to begin construction and operations.

(b) The public notifications in subsection (a)(1) and (2) of this section are required on an annual basis following the second anniversary date of permit issuance, date the facility ceased accepting waste, or the effective date of this section, whichever is later, until waste acceptance begins or resumes.

(c) The notice requirements of this section are applicable to MSW permits issued:

(1) on or after the effective date of this section; and

(2) before the effective date of this section.

(d) For the purposes of this section, permit issuance means the date that the permit is issued by the commission or the date of a final, non-appealable decision regarding the permit.

§305.131. Revocation of Inactive Municipal Solid Waste Permit.

A municipal solid waste permit may be revoked at the discretion of the commission under the procedures found in §305.68 of this title (relating to Action and Notice on Petition for Revocation or Suspension) if the commission finds that the owner or operator has failed to provide notice to the public as required by §305.130 of this title (relating to Notice of Inactive Municipal Solid Waste Permit).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 13, 2005.

TRD-200501940
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: June 2, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 239-0348

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CHAPTER 337. DRY CLEANER ENVIRONMENTAL RESPONSE

The Texas Commission on Environmental Quality (commission or TCEQ) adopts new §§337.1 - 337.4, 337.10 - 337.15, 337.20 - 337.22, 337.30 - 337.32, 337.40, 337.41, 337.50, 337.51, 337.61 - 337.63, 337.70 - 337.72, and 337.80. Sections 337.3, 337.10, 337.15, 337.20, 337.21, 337.31, 337.41, 337.63, and 337.72 are adopted *with changes* to the proposed text as published in the November 12, 2004, issue of the *Texas Register* (29 TexReg 10444). Sections 337.1, 337.2, 337.4, 337.11 - 337.14, 337.22, 337.30, 337.32, 337.40, 337.50, 337.51, 337.61, 337.62, 337.70, 337.71, and 337.80 are adopted *without changes* to the proposed text and will not be republished. The commission also withdraws the proposal of §337.60 in this issue of the *Texas Register*.

The commission also withdraws the proposed new sections to 30 TAC Chapter 37, Financial Assurance, in this issue of the *Texas Register*.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The purpose of the adopted rules is to implement House Bill (HB) 1366, 78th Legislature, 2003. HB 1366 amends the Texas Health and Safety Code (THSC) by adding a new Chapter 374. HB 1366 requires rules to be adopted that are necessary to administer and enforce the new chapter, including rules that establish: 1) performance standards for dry cleaning facilities; 2) requirements for the removal of dry cleaning solvents and waste from dry cleaning facilities; 3) criteria to be used in setting priorities for the expenditure of money from the dry cleaning fund; and 4) criteria under which the agency may determine the level at which corrective action is considered complete.

SECTION BY SECTION DISCUSSION

The commission adopts a new Chapter 337, Dry Cleaner Environmental Response, to establish the procedures to administer and enforce HB 1366.

Throughout this rulemaking package, minor administrative changes are made from proposal to be consistent with Texas Register requirements and other agency rules, for clarity, and for better readability.

New §337.1, Purposes, provides the purposes of the chapter including regulating and remediating certain dry cleaning facilities as prescribed by THSC, Chapter 374; establishing minimum standards and procedures to reasonably protect and maintain the quality of the state's groundwater and surface water resources from contamination that could result from any release from a dry cleaning facility; providing for the use of risk-based corrective action; and providing for the protection of human health and safety and the environment of the state.

New §337.2, Applicability, describes who the chapter applies to, which includes all dry cleaning facilities, dry cleaning drop stations, and distributors. New §337.2 also lists the entities that the chapter does not apply to based on the commission's interpretation of the terms "dry cleaning drop station" and "dry cleaning facility" set forth in THSC, §374.001. This section provides clarification as to which entities come within the scope of the rules to help eliminate confusion and achieve better compliance.

New §337.3, Definitions, defines the following new terms: application for ranking; distributor; dry cleaning machine; dry cleaning waste; dry cleaning wastewater; empty; gross annual receipts; in service; nonparticipating non-perchloroethylene (perc) user registration certificate; operating dry cleaning drop station; operating dry cleaning facility; participating non-perc user registration certificate; permanently removed from service; secondary containment; and temporarily removed from service. The definition of "Permanently removed from service" is changed from proposal to delete the word "proper." The word was extraneous to the definition because the standards for removal from service are set forth elsewhere in the rules. The definition of "Secondary containment" is changed from proposal to delete the phrase "before the release can be detected" from the end of the sentence. The additional phrase was unnecessary to the meaning of the term and had the possibility of causing confusion.

New §337.4, General Prohibitions and Requirements, sets forth the following prohibitions and requirements: new dry cleaning facilities must meet the performance standards; a distributor is prohibited from selling, delivering, or otherwise distributing any dry cleaning solvent to a dry cleaning facility unless the dry cleaning facility has a valid, current registration certificate; the distributor must obtain and record the registration number from the dry cleaning facility's current registration certificate; a distributor cannot sell, deliver, or otherwise distribute the dry cleaning solvent perc to a dry cleaning facility with a nonparticipating non-perc user registration certificate or a participating non-perc user registration certificate; a person is prohibited from purchasing dry cleaning solvent from a distributor that does not have a valid, current distributor registration certificate issued by the executive director; a person is prohibited from purchasing the dry cleaning solvent perc for a dry cleaning facility with a nonparticipating non-perc user registration certificate or a participating non-perc user registration certificate; and a distributor is prohibited from selling, delivering, or otherwise distributing any dry cleaning solvent to a dry cleaning drop station. These prohibitions and requirements are established to provide the process and specifics by which certain provisions of the statute are fulfilled, such as registration in THSC, §374.102; new facility compliance with performance standards in THSC, §374.053; solvent fee collection and disposition in THSC, §374.103; and limitations concerning non-perc facilities in THSC, §374.104.

New §337.10, Registration for Dry Cleaning Facilities and Drop Stations, sets forth the registration requirements of dry cleaning facilities and dry cleaning drop stations. All operating dry cleaning facilities and dry cleaning drop stations must be registered with the agency in accordance with THSC, §374.102. This section provides the requirements for the registration procedures including when to register, how to register, when to update information, and who may complete and submit registration forms. These requirements provide clarity and consistency for the agency's registration process to assist in achieving an efficient and effective program. Section 337.10(b)(2) is adopted with a change in the proposed text. The word "space" was made plural to correctly correspond to other parts of the same sentence.

New §337.11, Dry Cleaner Registration Certificates, sets forth the procedures related to registration certificates for dry cleaning facilities and dry cleaning drop stations, including obtaining, renewing, and displaying a certificate, as well as the process for revocation or denial of a certificate. Dry cleaner registration certificates are necessary to receive delivery of dry cleaning solvents. THSC, Chapter 374 requires a dry cleaning facility owner to post the owner's registration number in the public area of the dry cleaning facility and requires a distributor to obtain and record the registration number prior to selling solvent to a facility. Since the registration number is a primary component of the certificate, the requirements of this section assist in implementing these portions of the statute. Additionally, this section provides clarity and consistency for the agency's dry cleaner registration process to assist in achieving an efficient and effective program.

New §337.12, Registration for Distributors, sets forth the requirements for the registration of distributors. Distributors in operation on or after September 1, 2003, must register with the agency. Since distributors collect the solvent fees per THSC, §374.103, it is important that the agency have verifiable information on each of the various distributors throughout the state. These requirements assist the commission in tracking the fees collected and making sure that they are ultimately paid to the agency for the Dry Cleaning Facility Release Fund.

New §337.13, Distributor Registration Certificate, sets forth the procedures related to registration certificates for distributors, including obtaining and displaying a certificate, as well as the process for revocation or denial of a certificate. The certificate is necessary for the delivery of dry cleaning solvents and makes it easier for a dry cleaner to determine if a distributor is registered with the agency. This is important because, under these rules, dry cleaners are prohibited from purchasing solvent from a distributor who is not registered with the agency.

New §337.14, Registration Fees, sets forth the procedures and requirements for owners of operating dry cleaning facilities and dry cleaning drop stations to pay the registration fees required by THSC, §374.102. The owner of the facility or drop station on or after September 1 of each state fiscal year (FY) is responsible for the registration fees owed for the state FY beginning on September 1. However, if a person acquires a dry cleaning facility or dry cleaning drop station that does not have a current registration certificate, the facility or drop station will have to be registered and the fee paid before a current registration certificate is issued. This section also requires owners to pay penalties and interest on late payments. These procedures and requirements provide clarity and consistency for the fee payment process and assist in achieving an efficient and effective program.

New §337.15, Solvent Fees, sets forth the procedures and requirements for payment and collection of the dry cleaning solvent fees required by THSC, §374.103. This section includes the entities exempt from paying the solvent fees, reporting requirements for distributors, specifications on payment of collected fees to the agency, and provisions governing late payments. Although this section does cover payment of fees by dry cleaning facilities, it primarily addresses distributors' collection and payment of those fees. Since the fees collected by distributors can add up to large sums of money for the Dry Cleaning Facility Release Fund, requirements such as these are necessary to track collections and encourage timely payment to the agency. Proposed §337.15(c)(5) has been deleted and the subsequent paragraphs have been renumbered. This paragraph has been deleted based on possible conflicts with pending legislation. The deleted language will be reassessed after the conclusion of the 79th Legislative Session.

New §337.20, Performance Standards, sets forth the performance standards that apply to dry cleaning facilities and dry cleaning drop stations, including the dates by which owners must be in compliance. In §337.20(b), compliance with 30 TAC Chapter 335, Subchapter C, is required for storage, treatment, and disposal of hazardous dry cleaning wastes. Proposed subsections (b) and (d) have been deleted and all other subsections have been relettered accordingly. These subsections have been deleted based on possible conflicts with pending legislation. The deleted language will be reassessed after the conclusion of the 79th Legislative Session. Section 337.20(c) requires compliance with the emission standards for hazardous air pollutants, as specified by HB 1366, and also specifies existing air permitting requirements for dry cleaners. All dry cleaners must have a new source review authorization. To satisfy this requirement, a person may claim the permit by rule (30 TAC §106.411). This permit by rule may be used to authorize dry cleaning equipment, including misters and evaporators, if the requirements of 30 TAC §106.4 are met. Generally, it is expected that most dry cleaners will be able to claim the permit by rule. However, if emissions exceed those specified in §106.4, a new source review permit under 30 TAC Chapter 116 must be obtained. In §337.20(d), secondary containment is required for all dry cleaning facilities using chlorinated dry cleaning solvents and all other dry cleaning facilities when replacing or installing a dry cleaning machine on or after September 1, 2005. The secondary containment is required for both dry cleaning machines and storage areas. Secondary containment for facilities that do not utilize chlorinated solvents is required because other solvents may still pose an environmental concern. The dry cleaning machines made today usually include secondary containment, and such containment is already required by many local government fire codes. Section 337.20(d)(5)(A) is adopted with changes to the proposed text to clarify the specific actions that should be taken with damaged secondary containment if there is a release or imminent threat of release. The specificity of the new language should improve both compliance and enforcement in the situation described. Section 337.20(e) sets forth requirements governing the delivery of solvents to the dry cleaning facility in accordance with THSC, §374.053(c). These performance standards set forth reasonable requirements to be used in handling dry cleaning solvents to reduce the chance of releases into the environment.

New §337.21, Removal of Dry Cleaning Solvents and Wastes, sets forth the requirements for the removal of solvents and waste from dry cleaning facilities as well as the removal of solvents and wastes from dry cleaning machines that are temporarily or permanently removed from service. These requirements are necessary to encourage prudent waste-handling practices and to reduce the chance of releasing dry cleaning solvents and wastes into the environment. Section 337.21(c)(1) is adopted with changes to the proposed text to clarify that the performance standards do not have to be met if the dry cleaning machine is empty.

New §337.22, Variances and Alternative Procedures, sets forth the procedures for obtaining a variance from the requirements of the dry cleaning rules in this subchapter, as well as recordkeeping requirements related to a variance that is granted. Having the option of requesting a variance to the performance standards

provides flexibility in applicable situations while still addressing environmental concerns.

New §337.30, Prioritization of Sites, sets forth the provisions relating to the prioritization of dry cleaning sites that require corrective action. A site will only be eligible for prioritization if it has been ranked with the dry cleaning facility ranking system. Under THSC, §374.051(b)(3), criteria for prioritization is required to be in rule.

New §337.31, Ranking of Sites, sets forth the procedures for the ranking of dry cleaning facilities. The ranking system is a methodology designed to determine a numerical score for a facility based on various factors that may impact human health or the environment. This section includes the information required to be contained in the application for ranking package as well as who may apply for a site to be ranked under THSC, §374.154(b). If multiple parties are involved with a site, the commission encourages the parties to work together to submit a single application to the agency. It should be noted that under THSC, §374.154(b), only owners of current and former facilities and real property may apply for a site to be ranked. The commission is required to rank contaminated sites under THSC, §374.154(a), and this section sets forth a system to accomplish that requirement. Section 337.31(a)(7) is adopted with a change to the proposed text. The phrase "one per state fiscal year per site" was changed to "one per site per state fiscal year" for better readability.

New §337.32, Denial and Removal of Sites from Ranking, sets forth the criteria for the executive director to deny or remove a site from ranking. This section combines requirements from THSC, Chapter 374, as well as other reasonable provisions for a fair and effective corrective action program. For example, a site can be denied or removed from ranking if the applicant fails to provide access or does not pay dry cleaner registration fees that are owed to the state. In such cases, it is logical for the commission to be able to move to the next ranked site where the applicant is being cooperative and complying with the law.

New §337.40, General Requirements, sets forth the general requirements for meeting the deductible such as the eligible costs incurred by an applicant must be reasonable and appropriate. THSC, §374.203(d) requires that an applicant pay a $5,000 deductible. THSC, §374.154(e) allows costs in collecting certain information for the application to be credited against the deductible. Therefore, this section and §337.41 are necessary to establish the process and criteria for such credit.

New §337.41, Evidence of Eligible Costs, describes what evidence is required to be submitted with the application for ranking package to show that the deductible has been met; states that the executive director may require the applicant to provide additional information or return the application if the information is not sufficient to review the application; and gives examples of the types of costs that will not be considered eligible costs applicable to the deductible.

New §337.50, Corrective Action, states that corrective action will be conducted under 30 TAC Chapter 350 or other guidance established by the executive director; corrective action at a site may be postponed or suspended indefinitely in order to make money available for corrective action at a site with a higher priority; and postponement or suspension of corrective action does not mean that the cleanup standards under Chapter 350 have been met. This section implements THSC, §§374.051(b)(4), 374.053(b), 374.054, and 374.155.

New §337.51, Eligibility for Corrective Action, describes the prerequisites for an owner or other person to be eligible to have corrective actions costs paid by the Dry Cleaning Facility Release Fund. The exemption from certain claims in THSC, §374.207, is conditioned on the owner or other person being eligible to have corrective action costs paid by the fund. The primary purpose of this section is to clarify that a person cannot claim that he or she is exempt from certain claims under THSC, §374.207, if the person has not even submitted an application for the site to be addressed under the Dry Cleaner Environmental Response Program.

Proposed new §337.60, Nonparticipating Dry Cleaning Facility Financial Assurance, is withdrawn. This section has been deleted based on possible conflicts with pending legislation. The deleted language will be reassessed after the conclusion of the 79th Legislative Session.

New §337.61, Participating Non-Perchloroethylene User Registration Certificate, states that to obtain this certificate: 1) the owner must swear in an affidavit approved by the executive director that the owner has never used or allowed the use of perc at any dry cleaning facility in the state; and 2) perc must never have been used at the facility in question. This section follows THSC, §374.103(b)(1), and provides the procedures by which a person demonstrates exemption from dry cleaning solvent fees based upon the criteria contained in the law.

New §337.62, Nonparticipating Non-Perchloroethylene Facilities, sets forth requirements that apply to such a facility, including disclosure requirements for any sale of the facility. This section clarifies the requirements set forth in THSC, §374.104.

New §337.63, Owner Affiliation, states that for the purposes of this subchapter, the term "owner" includes various entities or persons affiliated with the owner. The purpose of this section is to avoid the situation where, for example, owners may reorganize into a new company or transfer a facility to a relative to qualify as an owner that has never used perc at any facility in the state. By doing such a reorganization or transfer, the owner will avoid solvent fees for a facility but the facility may still qualify for fund benefits if it has a participating non-perc user registration certificate. In response to a comment during the 30-day comment period, §337.63(3) has been changed to read, "the result of a reorganization of a business entity that used *or uses* perchloroethylene."

New §337.70, General Provisions, sets forth the requirements for the maintenance of records, records retention, and penalties for records violations. This section and §337.71 and §337.72 are necessary to provide a system for checking that persons are complying with certain performance standards and with the fee payment requirements.

New §337.71, Distributors, states that distributors shall maintain books, financial records, documents, and other evidence for sales of dry cleaning solvents and the fees collected and paid to the agency as required by this chapter. The records must include copies of all invoices for dry cleaning solvent sales and purchases showing the facility registration numbers, name, type, and quantity of the dry cleaning solvent purchased and sold, the name and address of the seller and purchaser, and the date of the sale or purchase.

New §337.72, Dry Cleaning Facilities, describes what records dry cleaning facilities must retain such as invoices of dry cleaning solvent purchases showing the name, type, and quantity of the dry cleaning solvent purchased, the name and address of the

seller, and the date of the purchase; waste disposal records; and secondary containment logs.

New §337.80, Audits and Investigations, states that the executive director may conduct audits or investigations concerning payments, fees, or information submitted to the agency and persons shall cooperate with such audits and investigations. This section is necessary to allow the commission to examine whether persons are complying with THSC, Chapter 374 and related commission rules.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Although the intent of the adopted rules is to protect the environment or reduce risks to human health from environmental exposure, the adopted rules will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Furthermore, even if the adopted rules did meet the definition of a major environmental rule, Texas Government Code, §2001.0225 only applies to a major environmental rule if the result of the rule is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. These adopted rules do not meet any of the four applicability requirements and thus are not subject to the regulatory analysis provisions of §2001.0225 even if they did meet the definition of a major environmental law. Specifically, the adopted rules are required by state law, are not adopted solely under the general powers of the agency, and do not exceed an express requirement of state law, federal law, or a delegation agreement or contract between the state and an agency or representative of the federal government.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rules and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these adopted rules because this is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13).

The adopted rules implement HB 1366, which created an environmental regulation and remediation program for dry cleaning facilities. Under the legislation, certain dry cleaners pay registration and solvent fees into a fund that is then used by the agency to investigate and clean up eligible contaminated dry cleaning sites. Additionally, the legislation and adopted rules contain performance standards and waste handling requirements to alleviate the possibility of future contamination from dry cleaning facilities. Such contamination is a real and substantial threat to public health and safety. The adopted rules significantly advance a health and safety purpose by providing the framework within which the agency will collect the funds for corrective action and use those funds to address health and safety concerns at sites around the state. Furthermore, the adopted rules significantly advance a health and safety purpose by specifying performance standards and waste handling requirements to alleviate future health and safety issues resulting from dry cleaning facilities. The adopted rules are narrowly tailored to apply to only certain dry cleaning facilities, dry cleaning drop stations, and distributors and do not impose a greater burden than is necessary to achieve the health and safety purpose as previously stated.

Nevertheless, the commission further evaluated these adopted rules and performed an assessment of whether these rules constitute a takings under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to implement HB 1366 by setting forth: 1) procedures governing registration, certificates, and the collection of fees; 2) performance standards; 3) requirements for the removal of dry cleaning solvents and waste; 4) procedures relating to the prioritization and ranking of sites; 5) criteria for corrective action; 6) provisions relating to non-perc users and facilities; 7) requirements for recordkeeping; and 8) provisions concerning audits and investigations.

Promulgation and enforcement of the adopted rules is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the adopted rules do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally) nor restrict or limit the owner's rights to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the adopted rules. The adopted rules implement HB 1366 by providing the framework within which the agency will regulate and remediate dry cleaning facilities and dry cleaning drop stations. There are no burdens imposed on private real property from these adopted rules and the benefits to society are the adopted rules' specific procedures and requirements for a program that addresses dry cleaning contamination and seeks to prevent future contamination.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rulemaking is identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6).

The commission prepared a consistency determination for the rules under 31 TAC §505.22 and found that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. The CMP policy applicable to the rulemaking is governing emissions of air pollutants to protect and enhance air quality in the coastal area so as to protect coastal natural resource areas and promote the public health, safety, and welfare. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in

the applicable CMP goals and policies. The rules establish performance standards for dry cleaning facilities; requirements for the removal of dry cleaning solvents and waste from dry cleaning facilities; criteria to be used in setting priorities for the expenditure of money from the Dry Cleaning Facility Release Fund; and criteria under which the executive director may determine the level at which corrective action is considered complete.

PUBLIC COMMENT

A public hearing on the proposed rules was held in Austin, Texas, on December 6, 2004, and oral and written comments were received. The public comment period ended at 5:00 p.m. on December 13, 2004. Comments were submitted during the comment period by BK's Cleaners & Laundry (BK's); Carl's Cleaners, Inc.; Jack Godfrey on behalf of Comet Cleaners (Comet Cleaners); Comet Cleaners of Laredo (CCL); Comet 1 Hr. Cleaners and Laundry (Nelson Properties); Chet Whatley on behalf of Concerned Dry Cleaners of Texas and Durrin's, Incorporated (CDT/Durrin); Deluxe Enterprises, Inc. (DEI); Halogenated Solvents Industry Alliance, Inc. (HSIA); Rick Sims on behalf of Sims City Cleaners, Inc. and Southwest Drycleaners Association (SCCI); Signature Laundry & Cleaners (Signature); and T.D. Expert Cleaners. The comments are addressed in the RESPONSE TO COMMENT section of this preamble.

The commenters did not indicate whether they were for or against the adoption of the rules; however, many of commenters expressed their opinions on HB 1366, 78th Legislature, 2003, which amended the THSC by adding a new Chapter 374. HB 1366 requires rules to be adopted by the commission to administer and enforce the Dry Cleaner Environmental Response Program. The commission appreciates the comments received on HB 1366. However, these comments go beyond the scope of this rulemaking because the comments pertain to the statute and not the proposed rules.

RESPONSE TO COMMENTS

Nelson Properties commented that the dry cleaner legislation could have been implemented fairly and gradually to assist all dry cleaners, but it was not.

Many of the timelines for implementing the law were set out in statute. Within this framework, the commission has tried to be flexible in implementing the law to assist dry cleaners with compliance. For example, the agency has initially allowed quarterly rather than annual payment of registration fees. No changes have been made in response to this comment.

Nelson Properties commented that the law should be fair to all and not discriminating due to financial status.

The treatment of businesses and facilities based on financial status is established in the statute and consequently is not addressed by the commission in this rulemaking. No changes have been made in response to this comment.

DEI commented that the dry cleaner law establishes an annual fee on all dry cleaning plants that use chemicals, and has also increased the price of perc by triple its original amount. This is imposed even on those who take responsibility for their chemical waste. CCL commented that it should not have to pay the $5.00 per gallon environmental fee on approved dry cleaning solvents. BK's commented that it costs $8,000 in registration fees and $10,000 in solvent fees for BK's stores.

The rates and applicability of registration and solvent fees are established in statute and consequently are not addressed by the commission in this rulemaking. No changes have been made in response to these comments.

DEI commented that before HB 1366 was created, it was paying from $300 - $400 a month for an agent to pick up any chemical waste that may have been developed during the dry cleaning process. Since the law has been created, DEI commented that it has to pay an extra $2,500 annually for performing a service it has been implementing for the past seven years, plus pay three times as much for perc.

The facility registration fees set forth in HB 1366 are intended to generate revenue to support the regulation and remediation activities of the Dry Cleaner Environmental Response Program. The fees are not related to, or in exchange for, the removal of chemical wastes by a private or governmental service. No changes have been made in response to this comment.

DEI commented that drop/pick-up stations have also been penalized by HB 1366. DEI further stated that although these stores do not use chemicals, they have been made to pay an annual fee along with larger plants. SCCI commented that the existing fee structure needs some adjustment, particularly with respect to dry cleaning drop stations that have never been operational. BK's questioned why there is a charge for pick-up stores.

The rates and applicability of registration fees are established in statute and consequently are not addressed by the commission in this rulemaking. No changes have been made in response to these comments.

SCCI commented that the original legislative intent for the $1,000 fee for opted-out drop station facilities should be followed. The $1,000 fee should be eliminated in any new legislation and replaced with a more reasonable amount. Comet Cleaners commented that the registration fee for nonparticipating facilities should be reduced.

The rates and applicability of registration fees are established in statute and consequently are not addressed in this rulemaking. No changes have been made in response to these comments.

SCCI commented that the commission should continue to administratively postpone the due dates for additional installments of the fee for opted-out drop station facilities. SCCI further commented that the current administrative suspension date of the collection of fees until June 2005, needs to be extended to September 2005, to coincide with the effective date of any new legislation.

The executive director will extend the deferral of certain registration payments owed for drop stations owned by nonparticipating facilities to September 2005, to accommodate any statutory changes that may be made in the future regarding fee amounts. If there is not a change to the law that affects these past due amounts, the deferred drop station registration amounts will appear on the FY 2006 registration invoice. No changes have been made in response to this comment.

SCCI commented that the option for dry cleaners to pay all fees on a quarterly payment schedule basis should be made permanent for all future years. SCCI further commented that the dry cleaners have appreciated the quarterly payment schedule and would like it to continue.

THSC, §374.102 states that the registration must be accompanied by the registration fee. Since the registration is annual, the fee is also expected to be paid on an annual basis. However, to

alleviate the sudden effect of this law on the dry cleaning community, the commission allowed registration fees for the first year to be paid in quarterly installments. Now that the dry cleaning community has had more time to incorporate the fees into their business planning, the fees will be required with the annual registration. However, the commission will accommodate any statutory changes that may be made in the future regarding the fee payment schedule. No changes have been made in response to this comment.

Comet Cleaners commented that the law imposes the highest fee on purchases of petroleum solvent of any state and that no consideration or concession is made to cleaners who switched from perc to petroleum solvents when they became readily available. Mr. Godfrey further commented that the fee on petroleum solvent should be reduced.

The rates and applicability of solvent fees are established in statute and consequently are not addressed by the commission in this rulemaking. No changes have been made in response to this comment.

DEI commented that dry cleaners have been isolated and punished for their use of chemicals when there are many other contributing factors to the contamination of water. DEI stated that laundromats, automobile repair shops, gas stations, and countless others use chemicals harmful to the environment, yet they have not been affected or fined.

The commission disagrees with this comment. The Texas Water Code prohibits any person or industry from discharging waste into the waters of the state in violation of Texas Water Code, Chapter 26, or a commission rule, permit, or order. Other industries are also regulated. For example, gas stations with underground storage tanks have been required to register and pay fees for their tanks since 1987. Additionally, the law is intended to assist the retail dry cleaning industry in the remediation of releases of dry cleaning solvents. No changes have been made in response to this comment.

DEI commented that the increased awareness for environmental safety and preservation is commended and understood, but that there are more reasonable and fair ways to help move towards a better system of chemical usage. DEI stated that instead of creating one general rule for a specified business, there could be more thorough checks on who does and does not take care of any contamination created, which would allow for a more accurate and rational enforcement of a law to help the environment.

The commission agrees with the comment that increased awareness for environmental safety and preservation is a desirable goal. The agency already has in place a number of programs that strive to provide a framework to enable all citizens to adhere to the state's rules and statutes for protecting the environment. These rules, which are specific to the retail dry cleaning industry, were developed in direct response to a mandate from the 78th Legislature through the passage of HB 1366. In developing the proposed rules, the agency has worked with industry and public representatives to create rules that accurately reflect the requirements of the statute and provide reasonable protection for the environment. No changes have been made in response to this comment.

T.D. Expert Cleaners commented that it is only a drop and pick-up station and no chemical, gas, or any kinds of toxic chemicals have ever been used at its business and that it has never done anything to damage the environment.

HB 1366 specifically includes drop stations within the scope of the law. Therefore, these rules also address drop stations in the agency's efforts to meet the rulemaking requirements of the law. No changes have been made in response to this comment.

SCCI commented that the five-year ownership of property requirement for landlords should be eliminated.

The property ownership requirement is established in statute and, consequently, is not addressed in this rulemaking. No changes have been made in response to this comment.

SCCI commented that wastewater of non-perc dry cleaning facilities should not be regulated in any way since it is not hazardous waste and does not present an environmental concern.

HB 1366 specifically requires that rules adopted under THSC, §374.053, ensure that wastewater from a dry cleaning unit or discharge of dry cleaning solvent is not discharged to a sanitary sewer, to a septic tank, or to waters of the state. Consequently, these rules contain such requirements. No changes have been made in response to this comment.

SCCI commented that the definitions in the law should be changed to apply only to retail dry cleaners, i.e., North American Industry Classification System, Industrial Care Code, 812320.

This comment is beyond the scope of this rulemaking, as changes to the statute can only be made by the Texas Legislature. No changes have been made in response to this comment.

HSIA commented that the language of THSC, §374.154(c), indicates that costs incurred in collecting the information and evidence necessary for filing an application for ranking "shall be credited against the deductible payable by the applicant," but does not require that the applicant have already incurred costs equal to the deductible in order to be ranked. Although it is possible that the dry cleaner may have spent $5,000 or more to collect the necessary information, it is inappropriate to require it.

The commission has estimated that the cost of collecting the required information and evidence to support an application for ranking will almost always meet or exceed the $5,000 deductible. THSC, §374.203(d) requires that the applicant "shall pay as a deductible the first $5,000 of corrective action costs incurred because of a release from the dry cleaning facility." In order to ensure that THSC, §374.203(d) is satisfied, the commission is requiring that the deductible be paid before the state expends monies from the fund. In order to do this, the rule requires that these costs be paid prior to an applicant applying for ranking. The intent is not, as the commenter states, "to identify those persons who have spent some specific amount of money on a site," but rather to ensure that the applicant has met the deductible as required under THSC, §374.203(d), prior to the state expending funds on the site. No changes have been made in response to this comment.

HSIA commented that to require applicants to make up the difference between what they have spent and the $5,000 deductible is inconsistent with the goals of THSC, Chapter 374, and may penalize smaller cleaners with limited access to cash. The only criteria for ranking should be whether the applicant has supplied the necessary information, not whether they can afford the price of ranking. HSIA stated that it believed eliminating the requirement that applicants already have spent the $5,000 deductible prior to ranking will not have a significant impact on the amount of money available in the fund.

The commission does not agree with this comment. Requiring applicants to make up the deductible amount if they have not expended sufficient funds to meet the $5,000 deductible is consistent with the goals of THSC, Chapter 374, because THSC, §374.203(d) specifically states that the applicant "shall pay as a deductible the first $5,000 of corrective action costs incurred because of a release from the dry cleaning facility." Eliminating the requirement for the $5,000 deductible prior to ranking as suggested by the commenter is addressed in a prior comment. No changes have been made in response to this comment.

HSIA commented that it understands the commission's motive for excluding voluntary cleanups from the Dry Cleaning Facility Release Fund eligibility and stated that it believes there may be circumstances where such an exclusion could impair cleanup and be inconsistent with the goals established by the legislature. HSIA also stated that persons who voluntarily take corrective action for sites that have received rankings under THSC, §374.154, should be eligible for reimbursement for some portion of their costs, provided the amount and timing of the reimbursement is commensurate with the commission's prioritization for the site. HSIA stated that a property owner may wish to initiate a voluntary corrective action in order to expedite sale of a commercial property in advance of the commission's timetable and that exclusion of any eligibility for reimbursement may serve as a significant disincentive for the owner to accelerate corrective action that he/she may otherwise undertake.

The commission applauds persons who undertake voluntary actions and hopes that these types of activities continue at sites throughout the state. However, the Voluntary Cleanup Program was created as a self-funding program with significant incentives available to those who receive a certificate. The Dry Cleaner Environmental Response Program was created for the commission to use limited funds from the Dry Cleaning Facility Release Fund to address contamination from dry cleaning facilities. As such, the commission sees these two programs as separate and distinct. In terms of reimbursement for other voluntary actions, the commission does not believe such reimbursement is consistent with the ranking of sites and prioritization of funds set forth in THSC, Chapter 374. No changes have been made in response to this comment.

Signature commented that it had sold its first dry cleaner in 1996, voluntarily cleaned the site up, and received a certificate of completion. Signature also commented that it purchased a new dry cleaner in 2004 and has never used perc at the new location, only petroleum solvent. Signature commented that it is not fair to voluntarily clean up and pay well over $100,000 to get a certificate of completion, and then have to pay an enormous fee for a permit and also "top dollar" tax on petroleum solvent. CCL commented that it should never have had to pay the tax on the locations that never used perc or future locations it might open. The new locations were never chemically connected to the store that first used perc and each location should stand on its own merits. CCL also stated that there is no logical reason why it or any other owner in a similar position should be penalized by the tax on solvent.

The statute mandates specific registration and solvent fees as well as who is required to pay those fees. Therefore, this comment is beyond the scope of this rulemaking. No changes have been made in response to these comments.

Signature commented that it is "obvious who got HB 1366 rushed through and their reason for doing so. They should have to pay for their cleanup just like we did when we sold our first cleaners." CCL commented that test results showed it operated a safe store, but that it still will be penalized. CCL commented, "This will become more prevalent once a site has been tested, proven clean or cleaned up and deemed non-contaminated. Why put extra-cost burden on a business owner?"

The statute mandates specific registration and solvent fees as well as who is required to pay those fees. Therefore, this comment is beyond the scope of this rulemaking. No changes have been made in response to these comments.

BK's commented that the dry cleaning rules are only for the cleaners and landlords who do not run a good operation.

As stated in THSC, §374.051(b)(2), one of the goals of the rules to be adopted under the statute is to prevent future releases. To meet this goal, the commission has included performance standards in the rules for all facilities using dry cleaning solvents to prevent or minimize future releases at as many locations as possible. The hope is that all dry cleaning facilities will run a good operation. No changes have been made in response to this comment.

BK's commented, "If my business would need to use the dry cleaner program, I could forget it. We would only get on the List."

If a release is discovered at a facility, the owner can submit an application to the program and the site will receive a ranking score. The ranking score will be used in conjunction with other factors to establish a prioritization schedule for the use of the funds. Other factors may include the amount of funds available, proximity to other sites, site conditions (i.e., vacant buildings and planned construction activities), and immediate threat to health and human safety. The commission will then begin corrective action on properties using this "list" of ranked and prioritized sites. No changes have been made in response to this comment.

BK's commented that its customers are tired of the raising prices due to HB 1366.

The commission acknowledges that businesses typically pass along regulatory and other costs to their customers when setting prices. Although the commission is sympathetic to these business pressures, such decisions are purely the authority and responsibility of businesses. Additionally, the rates and applicability of registration and solvent fees are established in statute and consequently, are not addressed by the commission in this rulemaking. No changes have been made in response to this comment.

CDT/Durrin commented that the requirement for petroleum solvent dry cleaning machines to have secondary containment is not warranted because it is not specifically required in HB 1366. CDT/Durrin also stated the belief that petroleum solvents are not a known environmental threat today. SCCI stated that it agreed with the proposed rules that require secondary containment for new petroleum machines.

HB 1366 gave the commission broad authority to adopt rules to implement the law and requires the commission to adopt rules establishing performance standards. The commission has included the requirement for secondary containment on all facilities using chlorinated solvents and replaced or newly installed machines using petroleum solvents in the rules to prevent or minimize future releases at as many locations as possible. The decision to require secondary containment for petroleum machines installed after September 1, 2005, is in keeping with the advice from the Dry Cleaning Advisory Committee as well as members

of the audience in attendance at the public meeting where the issue was discussed with the Dry Cleaning Advisory Committee. Although the commission recognizes that petroleum-based solvents contain constituents that are less detrimental to human health and the environment and that may degrade more quickly than perc and its breakdown products, organic compounds are present in petroleum-based solvents that are considered to have potential health effects based upon the generally accepted body of toxicological research. There are existing state cleanup standards for some of the compounds known to be present in petroleum-based solvents. No changes have been made in response to this comment.

CDT/Durrin commented that in proposed §337.61, the language in the affidavit exceeds the definition in the law and is the same as it was a year and a half ago when CDT/Durrin managed to fight it down and get it turned around to some degree and that it needs to say what the bill says. CDT/Durrin also commented that the definition for perc should be from the law and should say, "The owner must swear in an affidavit approved by the Executive Director the owner has never allowed the use of perchloroethylene for cleaning fabrics or other garments and perchloroethylene, for cleaning garments and other fabrics, must have never been used in the facility in question."

The commission disagrees that the language regarding the affidavit in §337.61 exceeds the law. The language is almost identical to the corresponding provision in THSC, §374.103(b)(1), which states that the fee provisions for dry cleaning solvent do not apply to ". . . an owner who has never used or allowed the use of the dry cleaning solvent perchloroethylene at a dry cleaning facility in this state." Additionally, the language is identical to the language in THSC, §374.104(c), which states that a facility shall be designated as a nonparticipating facility if the owner demonstrates that ". . . the owner has never used or allowed the use of the dry cleaning solvent perchloroethylene at any dry cleaning facility in the state." The language presently included in §337.61 is different from the language in the first affidavits that were sent out by the executive director in late 2003. That language read as follows: "The owner has never used and has never allowed the use of the dry cleaning solvent perchloroethylene, in any amount or for any purpose, at any dry cleaning facility in the state." The language was objected to by several dry cleaners and the executive director agreed to accept affidavits that deleted that specific language since it was not included in the exact language of THSC, §374.104(c). In terms of incorporating language from the definitions in THSC, §374.001, the commission prefers the language to more closely follow THSC, §374.103(b)(1) and §374.104(c), since these sections specifically address the issue of non-perc dry cleaners. This will also make future affidavits more consistent with affidavits that have already been completed. Additionally, THSC, §374.001 does not contain a specific definition for perc. It does include perc in the definition for dry cleaning solvent and uses the language quoted by CDT/Durrin concerning the cleaning of garments or other fabrics. However, where other terms in this section are followed by the word "means" as in "Dry cleaning facility means . . ." the term "Dry cleaning solvent" is followed by the word "includes" so is not a limited definition. For this additional reason, the commission prefers that future affidavit language more closely follow THSC, §374.103(b)(1) and §374.104(c). No changes have been made in response to this comment.

CDT/Durrin commented that the section addressing owner affiliation was directed towards CDT/Durrin. CDT/Durrin also questioned who the owner is of a corporation and commented that there is not an owner, there are stockholders. CDT/Durrin further questioned whether the commission has the authority to go around corporate law in this manner and stated that there are safeguards with a corporation in regard to the individual and the stockholders and that there is no owner. CDT/Durrin stated that the commission is going to make it where you cannot even form a corporation and if you do, you have to abide by the commission rules. CDT/Durrin referenced §337.63 of the proposed rules and commented that the rule language states "used perchloroethylene" rather than "uses perchloroethylene." CDT/Durrin further commented that the bill did not address these types of issues and the agency is taking a stronger stance on corporations, family-owned businesses, limited liability corporations (LLCs), or limited liability partnerships (LLPs).

Section 337.63 was included in the rules to address the many questions the commission received regarding the definition of "owner" in the context of both participating and nonparticipating non-perc dry cleaning facilities. Although §337.63 only applies to participating non-perc facilities, the specific issue that was raised in regard to both types of facilities was whether the owner of a dry cleaning facility that once used perc could reincorporate and then say that the reincorporated entity as the new owner of that same facility had never used perc at any dry cleaning facility in the state. Consistent with the intent of HB 1366, §337.63 does not allow an owner to avoid paying solvent fees through this type of reincorporation or similar activity. This is especially important with participating non-perc facilities because a facility may be eligible for money from the Dry Cleaning Facility Release Fund to address perc contamination even though the facility is exempt from paying dry cleaning solvent fees. The commission does not believe that this rule subverts corporate law. For example, an entity may still reincorporate under corporate law. However, that entity, like many other entities, may not be eligible for the exemption from solvent fees. As to the comment on the tense of the word "used" in §337.63(3), the language has been changed to read, ". . . a business entity that used *or uses* perchloroethylene."

CDT/Durrin commented on the number of drop stations discussed in the preamble and questioned where the numbers were obtained and if the agency believed it was a correct number.

The number of drop stations the commenter referred to was obtained from the TCEQ's dry cleaner registration database. The commission does feel that the number is an accurate reflection of the dry cleaning drop stations and facilities that have registered. However, the commission agrees that not all facilities or drop stations may have registered. No changes have been made in response to this comment.

Carl's Cleaners, Inc. seconded the comments of CDT/Durrin that had been made up until this point in the hearing that was held on December 6, 2004.

The commission responded to each of CDT/Durrin's comments after the specific comment.

SCCI commented that the rules don't say what time limit dry cleaners have to report changes or if they just report changes when they renew their registrations. Also, SCCI asked if a specific form is required.

Section 337.10(b)(3) of the proposed rules states that any change or additional information must be submitted 30 days from the date of the occurrence of the change or addition. Section 337.10(b)(2) specifies that any change of information must

be submitted on the appropriate agency form and §337.10(c) discusses the specific required form. The current TCEQ Dry Cleaner Registration form should be used for annual registration and for any updates or amendments of registration information. No changes have been made in response to this comment.

Comet Cleaners commented that the bill was originally supposed to be site-specific, meaning that a perc plant would have to go into the fund, but that any plant that had never used perc would not have to participate in the fund.

To not participate in the benefits of the Dry Cleaning Facility Release Fund or to be exempt from the dry cleaning solvent fees, HB 1366 requires that an owner have never used, or allowed the use of, perc at any dry cleaning facility in the state. Thus, HB 1366 is not site-specific as that term is described by Comet Cleaners. Since requiring otherwise in rule would be in direct and express conflict with the original legislation, no changes have been made in response to this comment.

Comet Cleaners commented that new owners entering the business who do not use perc must either post a $500,000 bond or participate in the fund.

The requirement established in statute to post a $500,000 bond applies only to an owner who begins operation in the four-month period beginning on September 1, 2003, and ending on December 31, 2003, and who also files an option not to participate with the commission. All owners beginning operation after December 31, 2003, must participate in the fund and no bond requirement applies to owners beginning operation after that date. These requirements are established in statute and consequently these rules address the issue consistent with those requirements. No changes have been made in response to this comment.

Comet Cleaners commented that "we're not ever going to raise enough money to clean up sites at $250,000 to $500,000 a site."

The funding sources and mechanisms for the Dry Cleaner Environmental Response Program are established in statute and consequently are not addressed by the commission in this rulemaking. No changes have been made in response to this comment.

Comet Cleaners commented that there needs to be something that gives the landlords, the shopping center owners, and the finance people some kind of comfort regarding liability since very few sites are getting cleaned up.

THSC, §374.207 does provide some liability protection to persons eligible to have corrective action costs paid by the Dry Cleaning Facility Release Fund. No changes have been made in response to this comment.

Comment Cleaners commented that perc was driving the bill, and that the rules should not apply to petroleum solvents because they do not contain benzene and are not toxic.

The commission agrees that benzene may not be the driving factor in cleanup of petroleum-based solvents. However, other organic compounds are present in petroleum-based solvents for which there are existing state cleanup standards. Therefore, cleanup of petroleum-based solvent releases may be needed in order to protect human health and the environment under existing rules. No changes have been made in response to this comment.

Comet Cleaners commented that since there is a limited supply of drinking water, there may be more need for dry cleaning in the future since the process does not use water. As a result, it is important to keep dry cleaning affordable for consumers.

The commission agrees that water should be protected and understands Comet Cleaner's goal to keep dry cleaning affordable for consumers. The mission of the commission is to: "protect our state's human and natural resources consistent with sustainable economic development. Our goal is clean air, clean water, and the safe management of waste." No changes have been made in response to this comment.

CDT/Durrin, commented that the rules need to address solvents coming in from out of state since there is no law to keep a dry cleaner from going across the border, buying solvents, and bringing them back to Texas. The commenter further stated that with perc at $15 a barrel, it makes it worth a long drive to pick up 400 or 500 gallons of it.

The commission addresses this issue in §337.4(d) by preventing a person from purchasing dry cleaning solvent from a distributor that does not have a valid current distributor registration certificate. Thus, if a person purchased solvents from a distributor in New Mexico that is not registered with the agency, then that person would be in violation of the rules and the agency could pursue enforcement. No changes have been made in response to this comment.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§337.1 - 337.4

STATUTORY AUTHORITY

The new sections are adopted under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its powers under the Solid Waste Disposal Act (SWDA); THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards for the management and control of solid waste; and HB 1366, 78th Legislature, 2003.

The adopted new sections implement THSC, Chapter 374.

§337.3. Definitions.

Definitions set forth in Texas Health and Safety Code, Chapter 374 and §3.2 of this title (relating to Definitions) that are not specifically included in this section also apply. The following words and terms, when used in this chapter, have the following meanings.

(1) Application for ranking--The form approved by the executive director for an applicant to provide information pertaining to a dry cleaning facility and which is used, in part, for the prioritization of sites for corrective action.

(2) Distributor--A person that:

(A) maintains or uses, permanently or temporarily, directly or indirectly, or through an agent, by whatever name called, an office, place of distribution, sales or sample room, warehouse or storage place, or other place of business that is used, in whole or part, for selling, distributing, or delivering dry cleaning solvent;

(B) has any representative, agent, salesperson, canvasser, or solicitor who operates in Texas under the authority of the distributor to sell, deliver, or take orders for dry cleaning solvent;

(C) uses independent contractors in direct sales, distribution, or delivery of dry cleaning solvent in Texas;

(D) allows a franchisee or licensee to operate under its trade name if the franchisee or licensee is required to collect Texas fees on dry cleaning solvent;

(E) conducts business in Texas through employees, agents, or independent contractors for the purpose of selling, distributing, or delivering dry cleaning solvent; or

(F) otherwise distributes dry cleaning solvent to dry cleaning facilities or dry cleaning drop stations doing business in Texas.

(3) Dry cleaning machine--The equipment used for the purpose of cleaning garments or other fabrics using a process that involves any use of dry cleaning solvents.

(4) Dry cleaning waste--The waste, including dry cleaning wastewater, that is generated at a dry cleaning facility and that contains dry cleaning solvents.

(5) Dry cleaning wastewater--The separator water and all other water that is generated during the dry cleaning process and that contains dry cleaning solvents.

(6) Empty--The status of a dry cleaning machine in which all solvents have been removed as completely as possible by the use of commonly employed and accepted industry procedures.

(7) Gross annual receipts--The sum of all payments or compensation, including payments or compensation from laundry and other revenue generating activities, received by a dry cleaning facility or drop station, less any returns, discounts, or allowances. The calculation of gross annual receipts must not be reduced for cost of goods sold, general and administrative expenses, depreciation and amortization, or other operating expenses. Gross annual receipts do not include any taxes imposed on the services provided by any municipality, state, or other governmental unit and collected by the dry cleaning facility or drop station for such governmental unit.

(8) In service--The status of a dry cleaning machine that it is being used for cleaning garments or other fabrics with a process that involves any use of dry cleaning solvents.

(9) Nonparticipating non-perchloroethylene user registration certificate--A registration certificate issued by the executive director to a facility designated as a nonparticipating facility in accordance with Texas Health and Safety Code, §374.104.

(10) Operating dry cleaning drop station--A dry cleaning drop station that has accepted clothes for dry cleaning anytime during the state fiscal year.

(11) Operating dry cleaning facility--A dry cleaning facility in which there is at least one operating dry cleaning machine in service anytime during the state fiscal year.

(12) Participating non-perchloroethylene user registration certificate--A registration certificate issued by the executive director to an owner designated as a nonuser of perchloroethylene in accordance with Texas Health and Safety Code, §374.103(b)(1).

(13) Permanently removed from service--The status of a dry cleaning machine when its use is terminated by removal from the dry cleaning facility in accordance with this chapter.

(14) Secondary containment--A containment method by which a continuous barrier is installed around and under the primary storage vessel (e.g., tank or piping) in a manner designed to prevent a release from migrating beyond the secondary barrier.

(15) Temporarily removed from service--The status of a dry cleaning machine that is not being used for cleaning garments or other fabrics for a time period not to exceed one year and that has not been permanently removed from service.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. REGISTRATION, CERTIFICATES, AND FEES

30 TAC §§337.10 - 337.15

STATUTORY AUTHORITY

The new sections are adopted under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also adopted under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its powers under the SWDA; THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards for the management and control of solid waste; and HB 1366, 78th Legislature, 2003.

The adopted new sections implement THSC, Chapter 374.

§337.10. Registration for Dry Cleaning Facilities and Drop Stations.

(a) Registration.

(1) All operating dry cleaning facilities and dry cleaning drop stations must be registered with the agency in accordance with this section.

(2) Any person that owns a new dry cleaning facility or dry cleaning drop station that is placed into service after September 1, 2003, shall register the dry cleaning facility or dry cleaning drop station with the agency in accordance with subsection (c) of this section and receive a registration certificate before operations begin.

(3) The owner of a dry cleaning facility or dry cleaning drop station is responsible for compliance with the registration requirements of this section. An owner may designate a legally authorized representative to complete and submit the required registration information. However, the owner remains responsible for compliance with the provisions of this section by such representative.

(4) All dry cleaning facilities and dry cleaning drop stations are subject to the fee and payment requirements of §337.14 and §337.15 of this title (relating to Registration Fees; and Solvent Fees, respectively). The failure by an owner to properly or timely register any dry cleaning facility or dry cleaning drop station does not exempt the owner from such fee and payment requirements.

(b) Changes or additional information.

(1) The owner of a dry cleaning facility or dry cleaning drop station shall provide written notice to the executive director of any changes or additional information concerning such facilities. Types of changes or additional information subject to this requirement include the following:

(A) change in owner or change in owner information (e.g., legally authorized representative, mailing address, or telephone number);

(B) change in dry cleaning facility or dry cleaning drop station information (e.g., establishment name, legally authorized representative, establishment address, or telephone number);

(C) change in the operational status of any dry cleaning unit (e.g., in service, temporarily out of service, removed from service);

(D) change in the type of cleaning solvents used;

(E) installation of additional dry cleaning units or ancillary equipment at an existing facility;

(F) addition of, or a change in the type of, secondary containment (for dry cleaning units or storage areas) and/or ancillary equipment;

(G) addition of, or a change in the type of, closed direct-coupled delivery system for the dry cleaning unit; and

(H) change in the location of records for the dry cleaning facility or dry cleaning drop station.

(2) Notice of any change or additional information must be submitted on the appropriate agency form that has been completed in accordance with this section. The agency's registration numbers for the dry cleaning facility/drop station must be included in the appropriate spaces on the form.

(3) Notice of any change or additional information must be submitted to the executive director within 30 days from the date of the occurrence of the change or addition.

(c) Required form for providing dry cleaning facility or dry cleaning drop station registration information.

(1) Dry cleaning facility owners and dry cleaning drop station owners shall provide the required information on the current agency registration form.

(2) The dry cleaning facility owner or dry cleaning drop station owner is responsible for ensuring that the registration form is fully complete and accurate. The form must be dated and signed by the owner or a legally authorized representative of the owner, and must be submitted to the agency in accordance with the time frames established in this chapter.

(3) Dry cleaning facility or dry cleaning drop station owners shall complete and submit a separate registration form for each facility or drop station.

(4) If additional information, drawings, or other documents are submitted with new or revised registration data, specific facility identification information (including the facility registration number) must be conspicuously indicated on each document, and all such documents must be attached to and submitted with the form.

(5) When any of the required dry cleaning facility or dry cleaning drop station registration information submitted to the executive director is determined to be incomplete or inaccurate (including illegible or unclear information), the executive director may require the owner to submit additional information. An owner shall submit any such required additional information within 30 days of receipt of such request.

§337.15. Solvent Fees.

(a) Except as provided in subsection (b) of this section, an owner of a dry cleaning facility shall pay to the distributor the fees for the purchase of dry cleaning solvents, including reclaimed or recycled solvents, as set forth in Texas Health and Safety Code, §374.103.

(b) The following are exempt from the fees required in subsection (a) of this section:

(1) a nonparticipating facility as designated in accordance with Texas Health and Safety Code, §374.104, whereby the owner has submitted the appropriate affidavit to the executive director and received a nonparticipating non-perchloroethylene user registration certificate; and

(2) an owner that has been designated as a nonuser of perchloroethylene in accordance with Texas Health and Safety Code, §374.103(b)(1), has submitted the appropriate affidavit with the executive director, and has received a participating non-perchloroethylene user registration certificate.

(c) The person that distributes the dry cleaning solvent shall collect the fee when the dry cleaning solvent is sold and remit the fee to the agency as required by this section. Solvent is considered sold when it is paid for in full or when delivered or otherwise distributed to the dry cleaning facility, whichever occurs first. A distributor is required to remit solvent fees due to the agency for any solvent that is considered sold, regardless of whether or when the distributor collected the fee from the dry cleaning facility to which the solvent was delivered or otherwise distributed.

(1) On or before the due dates, the distributor shall submit a report to the executive director, on a form approved by the executive director, and remit the amount of fees required to be collected for the associated reporting period. The report must set forth each sale of dry cleaning solvent with the associated facility registration numbers, name, address, solvent types and amounts, and dates of delivery. The following are the due dates and associated reporting periods.

(A) The due date for the reporting period of September 1 - November 30 is December 20.

(B) The due date for the reporting period of December 1 - February 28/29 is March 20.

(C) The due date for the reporting period of March 1 - May 31 is June 20.

(D) The due date for the reporting period of June 1 - August 31 is September 20.

(2) Upon receipt of payment for the solvent or delivery or other distribution to the dry cleaning facility, whichever occurs first, the distributor shall obtain and record the registration number and registration expiration date of the facility to which the solvent is sold, delivered, or otherwise distributed.

(3) The distributor shall retain the invoice or a copy of the invoice or other appropriate record of the sale of the solvent for five years from the date of sale.

(4) For the amount of the fee due, the distributor shall:

(A) separately state the amount on the invoice, bill, or contract to the customer and identify it as the Texas solvent fee;

(B) in the case of a fraction of a gallon, compute the fee by multiplying the fraction by the amount of the fee imposed on a whole gallon;

(C) not include the fee in, or add the fee to, the solvent price for the purpose of calculating the amount of sales tax due, if any; and

(D) not explicitly or implicitly absorb, assume, or refund the fee.

(5) At any time, the executive director may request in writing that the distributor remit the amount of fees required to be collected up to a date certain as determined by the executive director. The distributor shall remit such amount to the agency within ten days of receiving the executive director's request.

(6) The distributor must pay the fees by check, certified check, money order, or electronic funds transfer made payable to the "Texas Commission on Environmental Quality."

(7) Late payment and returned checks.

(A) Distributors that fail to pay quarterly solvent fees when due shall pay penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

(B) In addition to penalties, interest, and other amounts that may apply, if the distributor does not remit any of the required amount by the due date or a distributor's check is returned for insufficient funds, the executive director may require the distributor to remit collected fees on a different basis and time frame than set forth in this subsection.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. PERFORMANCE STANDARDS AND WASTE REMOVAL

30 TAC §§337.20 - 337.22

STATUTORY AUTHORITY

The new sections are adopted under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also adopted under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its powers under the SWDA; THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards for the management and control of solid waste; and HB 1366, 78th Legislature, 2003.

The adopted new sections implement THSC, Chapter 374.

§337.20. Performance Standards.

(a) Applicability. Unless otherwise specifically stated, these performance standards apply to all dry cleaning facilities and dry cleaning drop stations.

(b) Storage, treatment, and disposal of dry cleaning wastes. Any person at a dry cleaning facility that generates hazardous wastes shall comply with the provisions specified under Chapter 335, Subchapter C of this title (relating to Standards Applicable to Generators of Hazardous Waste).

(c) Air emission standards.

(1) The owner of a dry cleaning facility shall comply with Chapter 106 of this title (relating to Permits by Rule) or Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

(2) The owner of a dry cleaning facility using perchloroethylene and any person using perchloroethylene at a dry cleaning facility shall comply with emission standards for hazardous air pollutants as specified in 40 Code of Federal Regulations Part 63, Subpart M, in effect September 22, 1993.

(3) Each owner of a dry cleaning facility that is a major source as defined in Chapter 122 of this title (relating to Federal Operating Permits Program) shall obtain an operating permit.

(d) Dikes and other secondary containment structures.

(1) Applicability. Unless otherwise specifically stated, this subsection applies to:

(A) all dry cleaning facilities using chlorinated dry cleaning solvents; and

(B) all other dry cleaning facilities that replace or install a dry cleaning machine on or after September 1, 2005, with the exception of any dry cleaning facility that primarily uses carbon dioxide.

(2) Installation.

(A) Each owner of a dry cleaning facility shall install a dike or other secondary containment structure around each dry cleaning unit and around each storage area for dry cleaning solvents, dry cleaning waste, or dry cleaning wastewater.

(B) Each secondary containment structure must be maintained in good condition and capable of containing any leak, spill, or release of dry cleaning solvents in accordance with this subsection.

(C) Floor drains must not be located within any secondary containment structure required by this subsection.

(3) Construction materials.

(A) The materials used to construct each secondary containment structure must be impervious to, and compatible with, the dry cleaning solvents, dry cleaning wastes, and dry cleaning wastewater used or stored within the secondary containment structure.

(B) For any dry cleaning unit using chlorinated dry cleaning solvents and any storage area for chlorinated dry cleaning solvents, chlorinated dry cleaning wastes, or chlorinated dry cleaning wastewater, materials other than epoxy or steel may be used for the construction of the secondary containment structure only upon approval by the executive director. Approval for the use of a material other than epoxy or steel will be granted upon satisfactory demonstration to the executive director that the material is as compatible with, and impervious to, dry cleaning solvent as epoxy or steel.

(C) All sealant and all caulk used on each secondary containment structure must be impervious to and compatible with the

dry cleaning solvent, dry cleaning waste, or dry cleaning wastewater used or stored within the secondary containment structure.

(4) Storage capacity.

(A) Dry cleaning machine. Each secondary containment structure installed after September 1, 2005, must be capable of completely containing a minimum of 110% of the volume of liquids that can be held within the largest tank on a machine. The secondary containment area must be kept free of all materials or objects that would diminish its capacity to contain a leak, spill, or release.

(B) Storage area. Each secondary containment structure installed after September 1, 2005, must be capable of completely containing a minimum of 110% of the volume of liquids that can be held within the largest container in a storage area. The secondary containment area must be kept free of all materials or objects that would diminish its capacity to contain a leak, spill, or release.

(5) Inspections. The owner of each dry cleaning facility shall visually inspect each installed secondary containment structure weekly to ensure that the structure is not damaged.

(A) The owner of each dry cleaning facility shall ensure that any damage is repaired within seven days after the discovery. The owner may request an extension of this time limit from the executive director. If there is a release or imminent threat of release of dry cleaning solvents, the owner shall ensure that any release is immediately contained and controlled and that the dry cleaning machine is temporarily removed from service until the damage is repaired within the seven-day time limit.

(B) The owner of each dry cleaning facility shall keep a log of these inspections which include, as a minimum, the following information. This information must be provided to the executive director upon request:

(i) the date and time of each inspection;

(ii) the name of the person conducting the inspection;

(iii) a brief notation of findings; and

(iv) the date and nature of each repair or other action taken.

(C) For dry cleaning facilities using chlorinated solvents, inspection logs required under this section may be added to the leak inspection and repair records required by 40 Code of Federal Regulations Part 63, Subpart M, for dry cleaning equipment containing chlorinated solvent.

(D) Each inspection and repair log must be kept at the dry cleaning facility for not less than five years after the log has been completed.

(e) Delivery of solvents.

(1) Chlorinated dry cleaning solvents. All chlorinated dry cleaning solvents must be delivered to dry cleaning units and solvent storage containers by means of either of the following:

(A) a closed, direct-coupled delivery system; or

(B) an alternative method submitted to, and approved by, the executive director that provides protection of human health and safety and the environment that is equivalent to or greater than the protection provided by direct-coupled delivery systems.

(2) Non-chlorinated dry cleaning solvents, except for carbon dioxide solvents. All non-chlorinated dry cleaning solvents, except for carbon dioxide, must be delivered to dry cleaning units and solvent storage containers in a manner that will minimize releases to the environment.

§337.21. Removal of Dry Cleaning Solvents and Wastes.

(a) Disposal of dry cleaning wastes. Each owner of a dry cleaning facility shall ensure that all dry cleaning wastes are disposed of in accordance with §337.20 of this title (relating to Performance Standards).

(b) Dry cleaning facility that ceases operation. Each owner of a dry cleaning facility that ceases operation as a dry cleaning facility for 180 continuous days shall ensure that dry cleaning solvent (including dry cleaning solvent remaining in any dry cleaning machine), dry cleaning wastewater, and waste materials containing dry cleaning solvent, are removed from the dry cleaning facility within 30 days after the end of the 180-day period. An owner of a dry cleaning facility shall ensure that the dry cleaning solvent and solvent-containing residue from a dry cleaning machine is removed prior to the dry cleaning machine being disposed of, recycled, or reused.

(c) Dry cleaning machines temporarily removed from service.

(1) Dry cleaning machines that are temporarily removed from service for more than 180 days must be empty within 30 days after the end of the 180-day period and must meet all applicable performance standards until empty.

(2) Each owner of a dry cleaning facility shall ensure that weekly inspections are continued on any dry cleaning machine that is temporarily removed from service and is not empty.

(3) Prior to a dry cleaning machine being put back in service, the owner of a dry cleaning facility must ensure that the machine meets all applicable performance standards.

(d) Dry cleaning machines permanently removed from service. Dry cleaning machines that are permanently removed from service must be empty prior to removal from the interior of the facility.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 239-0348

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SUBCHAPTER D. PRIORITIZATION AND RANKING

30 TAC §§337.30 - 337.32

STATUTORY AUTHORITY

The new sections are adopted under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also adopted under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its

powers under the SWDA; THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards for the management and control of solid waste; and HB 1366, 78th Legislature, 2003.

The adopted new sections implement THSC, Chapter 374.

§337.31. Ranking of Sites.

(a) Dry cleaning facility ranking system.

(1) The dry cleaning facility ranking system is a methodology designed to determine a numerical score for a facility based on the executive director's judgment regarding various factors that may impact human health or the environment.

(2) The executive director will rank dry cleaning facilities based on information provided in an application for ranking package. An application for ranking will be accepted from persons eligible to apply for a site to be ranked under Texas Health and Safety Code, §374.154(b), including former owners of dry cleaning facilities and owners of real property on which a dry cleaning facility was formerly located that meet the eligibility criteria.

(3) An application for ranking package must contain:

(A) a completed application for ranking;

(B) proof that an owner of the real property has been notified of the application if the applicant is not an owner of the real property;

(C) proof that a lessee has been notified of the application if the applicant is an owner of the real property and the facility is leased;

(D) evidence that the deductible has been met in accordance with Subchapter E of this chapter (relating to Deductible);

(E) laboratory analyses of at least one groundwater sample (soil analyses may be substituted with written approval of the executive director);

(F) geologic well log(s) from a monitoring or supply well or hydrogeologic information from the contaminated site where the groundwater or soil sample was taken;

(G) field survey to locate potential receptors, including water wells and surface waters to at least 500 feet beyond the boundary of the property;

(H) a records survey to identify all water wells and surface water bodies within 1/2 mile of the boundary of the property;

(I) a full operational history of the facility including types of solvent currently and previously used; and

(J) any other information or evidence the executive director considers necessary.

(4) Application for ranking packages that are not administratively and technically complete as determined by the executive director will not be ranked. The executive director will notify the applicant in writing of such a determination.

(5) Factors the executive director may consider in ranking sites include:

(A) types of solvent currently in use;

(B) types of solvent used in the past;

(C) operational history of the facility;

(D) risk to drinking water supplies;

(E) surface water:

(i) demonstrated impact to surface water;

(ii) distance to surface water; and

(iii) probability of contamination;

(F) groundwater:

(i) aquifer impacted;

(ii) depth to groundwater;

(iii) distance to nearest known groundwater wells;

(iv) areal extent of groundwater contaminated;

(v) subsurface geology as it affects contamination migration;

(vi) concentrations of dry cleaning solvent in the groundwater;

(vii) probability of contamination; and

(viii) institutional controls prohibiting the use of groundwater for potable purposes;

(G) alternative water source availability;

(H) soil:

(i) soil type;

(ii) depth to groundwater;

(iii) depth of contamination;

(iv) concentrations of dry cleaning solvent in the soil;

(v) quantity of soil contaminated;

(vi) potential for exposure to the contaminated soils; and

(vii) soil on the outcrop of a major or minor aquifer, or the Edwards Aquifer recharge or transition zone;

(I) current and future land use; and

(J) air contamination:

(i) potential for exposure to vapors; and

(ii) potential for vapors to migrate into buildings or other receptors.

(6) For all applications that are technically and administratively complete, the executive director will rank the site and notify an applicant of the relative ranking assigned to the applicant's site on or before the 90th day after the date the application is received by the executive director.

(7) If a site has already been ranked by the executive director, an applicant may submit an updated application for ranking to reflect changes in site conditions as a result of corrective action or other circumstances. Such updates will be limited to one per site per state fiscal year.

(8) The executive director may re-rank sites where corrective action has occurred using monies from the Dry Cleaning Facility Release Fund to reflect changes in site conditions as a result of corrective action or other circumstances.

(b) Even if a site has been ranked, a person may take corrective action at the person's own expense at any time in accordance with commission rules. The resulting expenses will not be reimbursed by

the agency. In addition to any other notice required, an applicant shall give the executive director notice of such corrective action within 30 days after the action is completed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 12, 2005.

TRD-200501915
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Effective date: June 1, 2005
Proposal publication date: November 12, 2004
For further information, please call: (512) 239-0348

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SUBCHAPTER E. DEDUCTIBLE

30 TAC §337.40, §337.41

STATUTORY AUTHORITY

The new sections are adopted under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also adopted under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its powers under the SWDA; THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards for the management and control of solid waste; and HB 1366, 78th Legislature, 2003.

The adopted new sections implement THSC, Chapter 374.

§337.41. Evidence of Eligible Costs.

(a) Evidence of eligible costs must be submitted with the application for ranking package and must contain:

(1) legible copies of invoices, providing a description of:

(A) any work performed;

(B) who performed the work;

(C) where the work was performed;

(D) the dates that the work was performed;

(E) the unit cost; and

(F) the total amount paid; and

(2) proof that the amounts shown on the invoices for which the credit toward the deductible is requested have been paid in full by the applicant. The submission must include either:

(A) business receipts or invoices from the person that performed the work, indicating payments received;

(B) canceled checks;

(C) the certification of a certified public accountant that the expenses for which credit against the deductible is requested have been paid in full; or

(D) a notarized affidavit signed by the person that performed the corrective action, affirming that the amounts which the applicant represents as being paid to the person that performed the corrective action were paid in full.

(b) The executive director may require the applicant to provide additional information or return the application if the information is not sufficient to review the application. If the executive director requests additional information, the applicant shall provide such information within 30 days of receiving the request.

(c) The following types of costs are those that will not be considered eligible costs applicable to the deductible under this subchapter:

(1) replacement, repair, and maintenance of affected equipment;

(2) upgrading existing equipment;

(3) removal, transport, and disposal of equipment;

(4) loss of income or profits, including, without limitation, the loss of business income arising out of the review, processing, or payment of an application for ranking under this subchapter;

(5) decreased property values;

(6) bodily injury or property damage;

(7) attorney's fees;

(8) any administrative costs associated with the preparation, filing, and processing of an application for ranking under this subchapter;

(9) making improvements to the facility beyond those that are required for corrective action;

(10) compiling and storing records relating to costs of corrective action;

(11) corrective action taken in response to the release of a substance that is not a dry cleaning solvent;

(12) any activities, including those required by this chapter, that are not conducted in compliance with applicable state and federal environmental laws or laws relating to the transport and disposal of waste;

(13) interest on monies; and

(14) abatement or corrective action taken in response to a release of:

(A) a regulated substance that is not dry cleaning solvent; or

(B) a release of a dry cleaning solvent that has commingled with a regulated substance that is not a dry cleaning solvent unless the release of the dry cleaning solvent can be separately remediated.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 12, 2005.

TRD-200501916
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Effective date: June 1, 2005
Proposal publication date: November 12, 2004
For further information, please call: (512) 239-0348

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SUBCHAPTER F. CORRECTIVE ACTION

30 TAC §337.50, §337.51

STATUTORY AUTHORITY

The new sections are adopted under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also adopted under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its powers under the SWDA; THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards for the management and control of solid waste; and HB 1366, 78th Legislature, 2003.

The adopted new sections implement THSC, Chapter 374.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 12, 2005.

TRD-200501917
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Effective date: June 1, 2005
Proposal publication date: November 12, 2004
For further information, please call: (512) 239-0348

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SUBCHAPTER G. NON-PERCHLOROETHYLENE USERS AND FACILITIES

30 TAC §§337.61 - 337.63

STATUTORY AUTHORITY

The new sections are adopted under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also adopted under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its powers under the SWDA; THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards for the management and control of solid waste; and HB 1366, 78th Legislature, 2003.

The adopted new sections implement THSC, Chapter 374.

§337.63. Owner Affiliation.

For the purposes of this subchapter, the term "owner" includes any entity or person affiliated with the owner through:

(1) any relationship within the third degree of consanguinity or second degree of affinity as described in Texas Government Code, Chapter 573, Subchapter B;

(2) any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created solely by the instruments by which title to the facility is conveyed or financed, by a contract for the sale of goods or services, or by a contract for employment); or

(3) the result of a reorganization of a business entity that used or uses perchloroethylene.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 12, 2005.

TRD-200501918
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Effective date: June 1, 2005
Proposal publication date: November 12, 2004
For further information, please call: (512) 239-0348

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SUBCHAPTER H. RECORDKEEPING

30 TAC §§337.70 - 337.72

STATUTORY AUTHORITY

The new sections are adopted under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also adopted under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its powers under the SWDA; THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards for the management and control of solid waste; and HB 1366, 78th Legislature, 2003.

The adopted new sections implement THSC, Chapter 374.

§337.72. Dry Cleaning Facilities.

The owner of a dry cleaning facility shall retain the following records:

(1) invoices of dry cleaning solvent purchases showing the name, type, and quantity of the dry cleaning solvent purchased, the name and address of the seller, and the date of the purchase;

(2) waste disposal records as required by §337.20(b) of this title (relating to Performance Standards); and

(3) secondary containment log required under §337.20(d)(5)(B) of this title.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 12, 2005.

TRD-200501919

Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Effective date: June 1, 2005
Proposal publication date: November 12, 2004
For further information, please call: (512) 239-0348

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SUBCHAPTER I. AUDITS AND INVESTIGATIONS

30 TAC §337.80

STATUTORY AUTHORITY

The new section is adopted under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new section is also adopted under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its powers under the SWDA; THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards for the management and control of solid waste; and HB 1366, 78th Legislature, 2003.

The adopted new section implements THSC, Chapter 374.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 12, 2005.

TRD-200501920
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Effective date: June 1, 2005
Proposal publication date: November 12, 2004
For further information, please call: (512) 239-0348

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Texas Funeral Service Commission

Title 22, Part 10

The Texas Funeral Service Commission in accordance with Government Code §2001.039 submits this plan for review of its agency rules. These rules appear under Texas Administrative Code, Title 22, Part 10.

The Commission will consider, among other things, whether the reasons for adoption of these rules continue to exist. The comment period will last for 30 days beginning with the publication of the notice of intention to review. Comments or questions regarding the notice of intention to review may be submitted in writing within 30 days following the publication of notice in the *Texas Register*, to O.C. Robbins, P.O. Box 12217, Austin, Texas 78711.

For review beginning March 2005

Chapter 201. Licensing and Enforcement--Practice and Procedure

Chapter 203. Licensing and Enforcement--Specific Substantive Rules

TRD-200501962
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Filed: May 16, 2005

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Adopted Rule Review

General Land Office

Title 31, Part 1

The General Land Office (GLO) files this Notice of Readoption of rule 31 TAC, Chapter 20, relating to Natural Resources Damage Assessment, §§20.1-20.4, 20.10, 20.20-20.23, 20.30-20.36, and 20.40-20.44. This readoption of Chapter 20 is filed in accordance with the General Land Office's Intention to Review published in the February 11, 2005, issue of the *Texas Register* (30 TexReg 733).

The GLO has assessed whether the reasons for readopting 31 TAC, Chapter 20, §§20.1-20.4, 20.10, 20.20-20.23, 20.30-20.36, and 20.40-20.44 continue to exist. The GLO finds that the rules in Chapter 20 reflect current procedures of the GLO. The reasons for initially adopting the rules continue to exist. The GLO, therefore, readopts Chapter 20 relating to Natural Resources Damage Assessment in its entirety.

No comments were received on the proposed notice of intention to review.

Chapter 20 was adopted under authority granted to the commissioner of the GLO in §31.051, Texas Natural Resources Code, to adopt rules consistent with law.

This concludes the review of Chapter 20, Natural Resources Damage Assessment.

TRD-200501978
Trace Finley
Policy Director
General Land Office
Filed: May 18, 2005

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §521.13(b)

Total number of CPA employees and non-CPA owners in all offices in Texas:	Fee per each CPA employee and non-CPA owner:
1-5	$0.00
6-9	$15.00
10-49	$20.00
50-99	$25.00
100-249	$25.00
250 or more	$25.00

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Agriculture Resources Protection Authority

Notice of Hearing

In accordance with the Texas Agriculture Code, §76.009(i), and policies adopted by the Agriculture Resources Protection Authority (the Authority), notice is hereby provided that the Authority will take public comment on the status of the state's pesticide regulation efforts at its next regularly scheduled meeting. The meeting will be held on Monday, June 6, 2005, beginning at 9:30 a.m. at the offices of the Texas Department of Agriculture located at 1700 North Congress, Room 1000-F, Austin, Texas. The meeting will be conducted by telephone conference call in accordance with Texas Government Code, Sec. 551.125. For more information, please contact Phil Tham, Assistant Commissioner for Pesticide Programs at (512) 463-1093.

TRD-200501996

Dolores Alvarado Hibbs

Deputy General Counsel, Texas Department of Agriculture

Texas Agriculture Resources Protection Authority

Filed: May 18, 2005

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Texas Building and Procurement Commission

Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of **Request for Proposals (RFP) #303-5-111076**. TBPC seeks a three year lease of approximately 1,328 square feet of office lease space in Marble Falls, Burnet County, Texas.

The deadline for questions is May 30, 2005 and the deadline for proposals is June 2, 2005 at 3:00 P.M. The award date is July 1, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the revised RFP may be downloaded from the Electronic State Business Daily at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=58981.

TRD-200501992

Kenneth Ming

Purchaser

Texas Building and Procurement Commission

Filed: May 18, 2005

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Central Texas Regional Mobility Authority

Notice of Availability of Request for Proposals for Business Opportunity Program and Policy Outreach Services

The Central Texas Regional Mobility Authority (CTRMA), a political subdivision, is soliciting statements of interest and proposals from firms qualified or with experience in designing and implementing outreach programs for the participation of disadvantaged business enterprises (DBEs), historically underutilized businesses (HUBs), and small business enterprises (SBEs) in bidding, contracting and procurement processes. The firm will be responsible for outreach efforts in association with: (1) the CTRMA DBE program established in accordance with 49 C.F.R. Part 26 and applicable to all CTRMA projects involving federal financial assistance; and (2) the CTRMA SBE program established in accordance with §370.183 of the Texas Transportation Code and applicable to all CTRMA projects that do not involve any federal financial assistance. Both programs are set forth in the CTRMA's "Business Opportunity Program and Policy" (BOPP) (available at **http://www.ctrma.org/policies.php**).

The outreach program services will include formulating effective strategies to ensure participation of DBEs, HUBs, and SBEs in the bidding and procurement activities of CTRMA; recommending ways to package CTRMA projects to match the availability and capability of DBEs, HUBs, and SBEs in the region; and developing, maintaining and managing a CTRMA list/database of businesses qualified to participate in CTRMA bid and procurement activities. Other responsibilities include conducting project outreach initiatives, workshops, and trade fairs; conducting pre-bid/pre-proposal conferences; ensuring timely dissemination of bid/contract information; and providing referrals and assistance related to financial, bonding and insurance needs. The firm will work closely with CTRMA, TxDOT and FHWA staff to assist in formulating appropriate DBE, HUB and SBE participation goals, and to ascertain and report on the level of DBE, HUB and SBE participation in CTRMA projects. A complete listing of duties and responsibilities is included in the proposal packet materials.

A BOPP implementation and outreach services proposal packet will be available May 12, 2005. Copies may be obtained from the CTRMA website at **http://www.ctrma.org/public.php,** or by contacting the CTRMA Project Office at (512) 996-9778. Periodic updates, addenda, and clarifications will be posted on the CTRMA website, and interested parties are responsible for monitoring the website accordingly. Final proposals must be received in the CTRMA Project Office before 4:00 p.m. C.D.S.T. June 3, 2005, to be eligible for consideration.

Each firm will be evaluated based on the criteria and process identified in the RFP. The final selection of the BOPP implementation and outreach firm, if any, will be made by the CTRMA board of directors following completion of review of the responses, interviews if desired by the authority, and negotiation of a fee structure that provides the best overall value to the authority.

Questions concerning this RFP shall be directed in writing to Mr. Steve Pustelnyk, Communications Director for the CTRMA, 13640 Briarwick Drive, Suite 200, Austin, Texas 78729, or via email to **spustelnyk@ctrma.org**. CTRMA policies and procedures, including the CTRMA's "Business Opportunity Program and Policy," are available at **http://www.ctrma.org/policies.php**.

TRD-200501969

Mike Heiligenstein
Executive Director
Central Texas Regional Mobility Authority
Filed: May 17, 2005

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Notice of Availability of Request for Qualifications for Traffic and Revenue Engineering Services

The Central Texas Regional Mobility Authority (CTRMA), a political subdivision, is soliciting statements of interest and qualifications from firms interested in providing traffic and revenue engineering services. The firm(s) will be responsible for conducting complex traffic modeling and forecasting, including forecasting of revenues for bond-financed toll projects, and rendering opinions and other analyses concerning traffic and revenue projections as required under a trust agreement governing CTRMA's revenue bond financing for current and future projects.

Firms submitting qualifications must be an independent engineering firm with a nationwide and favorable reputation for skill and experience in traffic engineering, and recent and extensive experience in transportation and toll applications, complex modeling and forecasting tools, and demonstrated success in forecasting revenues generated by bond-financed transportation projects. The CTRMA is seeking to hire a Traffic and Revenue consultant and to establish a pool of other qualified firms to provide peer review of the lead firm. **Firms submitting qualifications must indicate whether they desire to be considered as a lead firm, a peer review firm, or both.**

A traffic and revenue engineering services qualifications packet will be available May 12, 2005. Copies may be obtained from the CTRMA website at http://www.ctrma.org/public.php, or by contacting the CTRMA Project Office at (512) 996-9778. Periodic updates, addenda, and clarifications will be posted on the CTRMA website, and interested parties are responsible for monitoring the website accordingly. Final responses must be received in the offices of the CTRMA by or before 4:00 p.m. C.D.S.T. June 17, 2005, to be eligible for consideration.

It is the policy of the CTRMA to encourage the participation of HUBs, minorities, and women in all facets of its activities. To this end, the extent to which HUBs, minorities, and women participate in the ownership, management and professional work force of a firm will be considered by the CTRMA in the selection of a firm to provide traffic and revenue engineering services. Respondents shall submit a current profile of their firm and any relevant certifications with their responses to this RFQ.

Each firm will be evaluated based on the criteria and process set forth in the RFQ. The final selection of the traffic and revenue engineering services firm, if any, will be made by the CTRMA board of directors.

Questions concerning this RFQ shall be directed in writing to Ron Fagan, Director of Operations, CTRMA, 13640 Briarwick Drive, Suite 200, Austin, TX 78729, and must be received by June 1, 2005.

TRD-200501970
Mike Heiligenstein
Executive Director
Central Texas Regional Mobility Authority
Filed: May 17, 2005

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of May 6, 2005, through May 12, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on May 18, 2005. The public comment period for these projects will close at 5:00 p.m. on June 17, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Kaneka Texas Corporation; Location: The project is located in wetlands adjacent to Big Island Slough, approximately 2,000 feet upstream from the intersection with Red Bluff Road, in Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: League City, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 298389; Northing: 298389. Project Description: The applicant proposes to discharge fill material into 2.974 acres of waters of the U.S. to expand their polymer production facility. The project will result in 2.944 acres of impacts to forested wetlands. Approximately 24,000 cubic yards of clean fill will be required to raise the elevation of the property to 17 feet mean sea level. The purpose of the project is to expand the facility to meet market demand. To compensate for the impacts to 2.974 acres of wetlands, the applicant proposes to purchase and preserve, by conservation easement, 6 acres of wetland habitat in the affected watershed. CCC Project No.: 05-0244-F1; Type of Application: U.S.A.C.E. permit application #23723 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Spinnaker Exploration Company; Location: The project is located in Federal waters in the Gulf of Mexico, in Galveston Area Block 312, Freeport Anchorage Area, offshore, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Freeport, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 289058; Northing: 3190881. Project Description: The applicant proposes to install, operate and maintain a marine jackup rig and appurtenances for oil and gas exploration and production activities. The applicant seeks authorization to drill OCS-G 26478 Well Nos. 1, 2, and 3 from a single surface location in the Galveston Area Block 312, Freeport Anchorage Area. CCC Project No.: 05-0261-F1; Type of Application: U.S.A.C.E. permit application #23718(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Pearl Crossing LNG Terminal LLC and Pearl Crossing Pipeline LLC; Location: Within the La Quinta Channel and adjacent graving dock (fabrication yard) near Ingleside, Texas in San Patricio County; in the Gulf of Mexico, block 220, West Cameron area, about 41 miles off the Louisiana Coast: and within a 53 mile long pipeline corridor in offshore waters beginning at block 220 and thence proceeding in a northwesterly route traversing the Calcasieu Pass Safety Fairway, Sabine Pass (Aransas) to Calcasieu Pass Safety Fairway and Sabine Pass Anchorage Area, coming on shore and tying into a proposed meter station at Johnsons Bayou, Louisiana, in Cameron Parish, thence proceeding along a westerly route paralleling

chenier ridges up to Sabine Lake, thence northward through Sabine Lake, a portion of the Sabine River, over emergent and forested landscapes and across the Gulf Intracoastal Waterway and other channels and tributaries ending at a new meter station and pipeline interconnection located at Starks, Louisiana in Calcasieu Parish for an onshore distance of 64 miles. Project Description: Dredge and remove 2,014,000 cubic yards of earthen material, as necessary, to construct a graving dock facility which would be utilized to fabricate a concrete gravity-based structure and to provide appropriate navigation depths in the LaQuinta Channel for launching, transporting and deploying the structure. Excavated material will be placed within local disposal sites, as shown on the site location map. The 590 feet long by 289 feet wide concrete-based structure, capable of berthing two carriers, would be installed on the sea floor in block 220, West Cameron area, approximately 41 miles off the Louisiana Coast in the Gulf of Mexico and would serve as a liquefied natural gas docking/unloading terminal with receiving, storage and regasification capabilities via the open-rack vaporization method. Approximately 1,114,593 cubic yards of water bottom sediments would be excavated and temporarily stockpiled as required to install two parallel 42-inch pipelines in the Gulf of Mexico beginning at the proposed docking terminal and extending northwesterly for a distance of approximately 53 miles tying into a proposed meter station situated within the coastal community of Johnsons Bayou, Louisiana. Approximately 2,100,800 cubic yards of native material would be displaced through clearing of construction and permanent rights-of-ways, grading, trenching and backfilling operations and dredging of flotation canal, as well as the deposition of 397,800 cubic yards of onsite excavation in addition to 66,304 cubic yards of hauled-in clay and 223,253 cubic yards of stone or gravel, all required to install approximately 64 miles of a single 42-inch pipeline, five meter stations, ten pipeline interconnections and access roadways. The pipeline would exit Johnsons Bayou meter station thence proceed in a westerly direction to Sabine Lake thence continuing in a northerly route tying into a proposed meter station and pipeline interconnection located at Starks, Louisiana, in Calcasieu Parish. In the Gulf of Mexico, pipelines would be buried 3 feet below the water bottom and not less than 10 feet where the pipeline crosses navigation fairways and 17 feet in anchorage areas. Pipelines onshore would be buried 3 feet below the ground surface, 5 feet below the water bottom in Sabine Lake and 20 feet below the Gulf Intracoastal Waterway. Horizontal directional drilling may be utilized to install pipelines at gulf and lake shoreline crossings as well as most navigable waterways. All work as previously described is required to fabricate, install, operate and maintain facilities and equipment as necessary to receive, process and transport liquid natural gas resources which is critical in meeting the nations' near future energy demands. CCC Project No.: 05-0264-F1; Type of Application: U.S.A.C.E. permit application #MVN-2004-5164-WY is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200501967

Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: May 17, 2005

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Comptroller of Public Accounts

Notice of Contract Award

Pursuant to §1201.027, Texas Government Code; Chapter 2254, Subchapter B, Texas Government Code; and Chapter 404, Subchapter H, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the award of the following contract:

A contract is awarded to RBC Dain Rauscher, Inc. 2711 North Haskell, Suite 2400, Dallas, Texas 75204-2936. The total contract amount for the contract is a $35,975 fee and $6,500 in expenses for each Tax Revenue Anticipation Note issue during the term of the contract. The term of the contract is May 11, 2005 through August 31, 2007.

The Comptroller's Request for Proposals 172a (RFP) related to this contract award was published in the March 14, 2005, *Texas Register* (30 TexReg 1513).

TRD-200501935
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: May 12, 2005

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 05/23/05 - 05/29/05 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 05/23/05 - 05/29/05 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Section 304.003 for the period of 06/01/05 - 06/30/05 is 6% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Section 304.003 for the period of 06/01/05 - 06/30/05 is 6% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-200501976
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 17, 2005

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Credit Union Department

Applications to Amend Articles of Incorporation

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application for a name change was received from Concho Valley Government Employees Credit Union, San Angelo, Texas. The credit union is proposing to change its name to Concho Valley Credit Union.

An application for a name change was received from Varco Employees Credit Union, Houston, Texas. The credit union is proposing to change its name to National Oilwell Varco Employees Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200501988
Harold E. Feeney
Commissioner
Credit Union Department
Filed: May 18, 2005

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Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from InvesTex Credit Union, Houston, Texas to expand its field of membership. The proposal would permit persons who live within a 10-mile radius of the InvesTex Credit Union office located at 5444 Atascocita Road, Suite 108, Humble, TX 77346, to be eligible for membership in the credit union.

An application was received from County & Municipal Employees Credit Union, Edinburg, Texas to expand its field of membership. The proposal would permit persons who live, work, attend school or worship within a ten mile radius of the credit union's office located at 3010 South McColl, Edinburg, Texas 78539, to be eligible for membership in the credit union.

An application was received from Varco Employees Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of National Oilwell Varco, Inc. and its subsidiaries who work in the U.S. and Canada, to be eligible for membership in the credit union.

An application was received from Midland Teachers Credit Union, Midland, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in Midland, Ector, Martin and Glasscock Counties, Texas, to be eligible for membership in the credit union.

An application was received from Educators Credit Union, Waco, Texas to expand its field of membership. The proposal would remove exclusionary language relating to persons who work or reside in McLennan, Coryell, Hill, Bosque, Lampasas and Falls Counties, Texas which protects the field of membership of certain occupational or associational based credit unions in these counties.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200501989
Harold E. Feeney
Commissioner
Credit Union Department
Filed: May 18, 2005

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC Section 91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership- Vacated

North East Texas Credit Union, Lone Star, Texas (Conditional)- See *Texas Register* issue dated March 26, 2004.

Application(s) for a Merger or Consolidation- Approved

Baytown Teachers Credit Union (Baytown) and Community Resource Credit Union (Baytown)- See *Texas Register* issue dated September 24, 2004.

TRD-200501990
Harold E. Feeney
Commissioner
Credit Union Department
Filed: May 18, 2005

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Texas Commission on Environmental Quality

Notice of Public Hearings on Proposed Revisions to 30 TAC Chapter 115 and the State Implementation Plan Concerning the Beaumont/Port Arthur (BPA) Ozone Nonattainment Area

The Texas Commission on Environmental Quality (commission) will conduct public hearings to receive testimony regarding proposed revisions to 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds, and the state implementation plan (SIP), concerning the Beaumont-Port Arthur (BPA) ozone nonattainment area, under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning SIPs.

The commission proposes a revision to the BPA SIP. This proposed SIP revision would include a reasonably available control technology (RACT) determination, a discussion of clean fleet requirements, a discussion of the marine vessel loading contingency measure, a reasonably available control measure (RACM) analysis, and a new motor vehicle emissions budget (MVEB). (Project Number 2005-020-SIP-NR)

The commission proposes amendments to §§115.167, 115.169, 115.219, 115.427, and 115.429. The proposed amendments would lower exemption levels for batch process operations and shipbuilding and ship repair operations in the BPA area from 100 tons per year to 50 tons per year to reflect the redesignation of the BPA area from moderate to serious for the one-hour ozone standard. The proposed amendments would also delete the contingency measure for control

of volatile organic compound emissions from marine terminals in the BPA area. (Rule Project Number 2005-017-115-AI)

Two public hearings on this proposal will be held on June 16, 2005, at 2:00 p.m. and 6:00 p.m. in the Swan Room, at the South East Texas Regional Planning Commission, located at 2210 Eastex Freeway in Beaumont, Texas. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearings. Individuals may present oral statements when called upon in order of registration. A time limit may be established at the hearings to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearings; however, commission staff members will be available to discuss the proposals 30 minutes before the hearings and will answer questions before and after the hearings.

Persons planning to attend the hearings who have special communication or other accommodation needs, should contact Lola Brown, Office of Legal Services at (512) 239-0348. Requests should be made as far in advance as possible.

Comments may be submitted to Lola Brown, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239-4808; or emailed to *siprules@tceq.state.tx.us* with Rule Project Number 2005-017-115-AI and/or Project Number 2005-020-SIP-NR in the subject line. All comments should reference Rule Project Number 2005-017-115-AI and/or Project Number 2005-020-SIP-NR. Comments must be received by 5:00 p.m., June 17, 2005. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tnrcc.state.tx.us/oprd/rules/propadop.html*. For further information, please contact Teresa Hurley of the Air Quality Planning and Implementation Division at (512) 239-5316 or Kelly Keel of the Air Quality Planning and Implementation Division at (512) 239-3607.

TRD-200501936
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 13, 2005

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Notice of Water Quality Applications

The following notices were issued during the period of May 10, 2005 through May 12, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

BENTON CITY WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 14265-001, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 15,000 gallons per day. The facility will be located approximately 1.0 mile south of the intersection of Farm-to-Market Road 2504 and Farm-to-Market Road 476 in Atascosa County, Texas.

ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 13734-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 6,000 gallons per day via 1.25 acres of public access subsurface drainfields. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located adjacent to Murray Fly School on Knox Drive and Westmark Street, west of the City of Odessa in Ector County, Texas.

CITY OF HARLINGEN has applied for a renewal of TPDES Permit No. 10490-002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,100,000 gallons per day. The facility is located at 1102 East Taft, approximately 800 feet southwest of the intersection of 15th Street and Commerce in the City of Harlingen in Cameron County, Texas.

MILITARY HIGHWAY WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 13462-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located approximately 2.5 miles northeast of the intersection of Farm-to-Market Road 1015 and U.S. Highway 281 in Hidalgo County, Texas.

NORTH ALAMO WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 13747-004, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located on an 80-acre tract, approximately 1.5 miles northwest of the intersection of Farm-to-Market Roads 88 and 2812 in Monte Alto in Hidalgo County, Texas.

NUECES BAY WLE, LP which operates the Nueces Bay Power Station, a steam electric generating facility, has applied of TPDES Permit No. WQ0001244000, which authorizes the discharge of once through cooling water and previously monitored effluent (PME) at a daily average flow not to exceed 500,000,000 gallons per day via Outfall 001, and low volume wastewater, metal cleaning waste, and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located at 2002 Navigation Boulevard, one and a half miles west of Corpus Christi Harbor Bridge in the City of Corpus Christi, Nueces County, Texas.

RAILYARD, LTD. has applied for a renewal of TPDES Permit No. 14165-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The facility is located approximately 8,500 feet northwest of the intersection of State Highway 21 and Brushy Creek in Hays County, Texas.

CITY OF SAN JUAN has applied for a renewal of TPDES Permit No. 11512-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility is located approximately 1.9 miles south of U.S. Highway 83 Business Route at the south end of the San Antonio Road in the City of San Juan in Hidalgo County, Texas.

UA HOLDINGS 1994-5, L.P. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014580001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility will be located approximately 750 feet west of the intersection of Walden Road and Grand Harbor Boulevard on the north side of Walden Road in Montgomery County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE

UNITED STATES DEPARTMENT OF THE NAVY which operates the Naval Weapons Industrial Reserve Plant McGregor, which formerly engaged in the manufacturing of solid propellant rocket motors (activities at the site currently consist of site remediation and closure), has applied for a major amendment to TPDES Permit No. WQ0002335000 to authorize additional discharges of treated groundwater via Outfall 001, a reduction in monitoring frequency and changes to reporting requirements for perchlorate at Outfall 001, and removal of effluent limitations

and/or monitoring requirements for total aluminum, chlorides, and total dissolved solids at Outfall 001. The current permit authorizes the discharge of treated groundwater from Area M on an intermittent and flow variable basis. The facility is located at 1701 Bluebonnet Parkway, just west of State Highway 317, bounded on the south by Farm-to-Market Road 2671, and on the north by the St. Louis Southwestern Railway, southwest of the City of McGregor, Coryell and McLennnan Counties, Texas.

VALERO REFINING - TEXAS, L.P. which operates a petroleum refinery, has applied for a renewal of TPDES Permit No. WQ0001909000 with a minor amendment to remove Outfalls 009, 010, 011, 012 and 013 from this permit. The applicant submitted a Notice of Intent for these outfalls to be permitted with the Multi-Sector General Permit TX050000 on October 28, 2004. The existing permit authorizes the discharge of storm water runoff, steam condensate, fire monitor water, and hydrostatic test water via Outfalls 001, 002, 004, 006 and 008, the discharge of treated process wastewater (including chromium containing wastewater), area washdown water, ballast water, and storm water runoff at a daily average flow not to exceed 2,390,000 gallons per day via Outfall 003, the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day via Outfall 005, the discharge of utility wastewaters, storm water runoff and reject water from the Electrodialysis Reversal (EDR) Process at a daily average flow not to exceed 3,300,000 gallons per day via Outfall 007, and the discharge of storm water runoff via Outfalls 009, 010, 011, 012 and 013. The draft permit will authorize the same discharges but not include Outfalls 009, 010, 012 and 013 which will be permitted with the Multi-Sector General Permit TX050000 for storm water discharges associated with industrial activities. The facility is located 5900 Up River Road, at the intersection of Valero Way and Up River Road, in the City of Corpus Christi, Nueces County, Texas.

TRD-200501982
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 18, 2005

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 5, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 5, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Alamo Concrete Products, Ltd.; DOCKET NUMBER: 2004-1942-WQ-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG110100, Regulated Entity Number (RN) 100250604; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: ready-mixed concrete plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES General Permit Number TXG110100, and the Code, §26.121(a), by failing to comply with the daily maximum total suspended solids; PENALTY: $3,264; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(2) COMPANY: Alfred Conhagen, Inc. of Texas; DOCKET NUMBER: 2005-0454-WQ-E; IDENTIFIER: RN100608785; LOCATION: La Marque, Galveston County, Texas; TYPE OF FACILITY: metal parts manufacturing; RULE VIOLATED: 30 TAC §281.25(a)(4), 40 Code of Federal Regulations (CFR) §122.26, and the Code, §26.121(a)(1), by failing to obtain an individual TPDES storm water permit or comply with the multi-sector general permit; PENALTY: $2,568; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Avis Rent-A-Car System, Inc.; DOCKET NUMBER: 2005-0299-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 152, RN101765329; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: rental car service; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $640; ENFORCEMENT COORDINATOR: Jill McNew, (512) 239-0560; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(4) COMPANY: Chapman's Grocery, Inc. dba Jiffy Mart #7; DOCKET NUMBER: 2004-1820-PST-E; IDENTIFIER: PST Facility Identification Number 70055, RN101498913; LOCATION: Georgetown, Williamson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Cari Bing, (512) 239-1445; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(5) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2005-0094-AIR-E; IDENTIFIER: Air Account Number HW0013C, RN102320850; LOCATION: Borger, Hutchinson County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.715(a), Air Permit Number 21918, and THSC, §382.085(b), by failing to maintain an emission rate below represented levels; and 30 TAC §101.201(a)(1)(B) and (b)(7) and THSC, §382.085(b), by failing to submit the initial report for incident number 39918 and by failing to identify all compounds known to have been released; PENALTY: $13,090; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(6) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2005-0054-AIR-E; IDENTIFIER: Air Account Number HG0566H, RN102018322; LOCATION: Pasadena, Harris County,

Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: THSC, §382.085(a), by failing to prevent unauthorized emissions; PENALTY: $3,160; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: D.B. Western, Inc.; DOCKET NUMBER: 2005-0072-IWD-E; IDENTIFIER: TPDES Permit Number 0004201000, RN100897362; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: organic chemical manufacturing; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(a), by failing to obtain a permit to discharge storm water from a non-process area of the facility; and 30 TAC §§305.125(1), 319.7(c), 319.9(c), and 319.11(a) and (b), and TPDES Permit Number 004201000, by failing to properly collect oil and grease samples, by failing to accurately complete the discharge monitoring reports, by failing to perform the required quality assurance and quality control analysis for the free available chlorine test procedure, by failing to maintain the required pH and temperature monitoring records, and by failing to provide a National Institute of Standards and Technology traceable thermometer; PENALTY: $7,076; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: DGPS Enterprises, Inc. dba Kountry Kwik; DOCKET NUMBER: 2004-2027-PST-E; IDENTIFIER: PST Facility Identification Number 47895, RN100927888; LOCATION: Huffman, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.6(b)(2)(C), by failing to provide written notification prior to initiating a major underground storage tank (UST) construction activity and by failing to confirm the initiation of a proposed UST construction activity; and 30 TAC §334.55(a)(3), by failing to have the removal of a UST conducted by qualified personnel; PENALTY: $3,240; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: City of Goldthwaite; DOCKET NUMBER: 2004-1653-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1670001, RN101409134; LOCATION: Goldthwaite, Mills County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(h)(1)(A), by failing to establish a cross connection program; 30 TAC §290.41(c)(3)(B), by failing to provide a well casing 18 inches above the ground surface; and 30 TAC §290.46(s)(1) and (v), by failing to calibrate all flow measuring devices and rate-of-flow controllers and by failing to install all water system electrical wiring in compliance with a local or national electrical code; PENALTY: $668; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Groendyke Transport, Inc.; DOCKET NUMBER: 2005-0327-PST-E; IDENTIFIER: RN102407947; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; and 30 TAC §205.6 and the Code, §5.702, by failing to pay general storm water permit fees; PENALTY: $1,920; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Johnson Roofing, Inc.; DOCKET NUMBER: 2005-0029-PST-E; IDENTIFIER: PST Facility Identification Number 70275, RN100645613; LOCATION: Robinson, McLennan County, Texas; TYPE OF FACILITY: roofing installation; RULE VIOLATED: 30 TAC §334.49(c)(2)(C) and (4), by failing to inspect the rectifier and by failing to have the cathodic protection system inspected and tested; 30 TAC §334.50(a)(1)(A), (b)(2), and (d)(1)(B)(iii)(I), and the Code, §26.3475(a), by failing to provide a release detection method capable of detecting a release from any portion of the UST system, by failing to conduct the triennial pipe tightness test, and by failing to take measurements for regulated substance inputs, withdrawals, and amount still remaining in the tank for each operating day; 30 TAC §334.7(d)(3), by failing to submit an amended registration form reflecting the type of piping material used; and 30 TAC §334.75(b), by failing to contain and immediately clean up a spill of any petroleum substance; PENALTY: $4,480; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Emel G. Rubio dba La Bahia; DOCKET NUMBER: 2004-1507-PWS-E; IDENTIFIER: PWS Number 0880007, RN101213304; LOCATION: Goliad, Goliad County, Texas; TYPE OF FACILITY: non-community public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(F), (3), and (f)(3) and THSC, §341.033(d), by failing to collect at least five routine samples the month following a total coliform positive result, by failing to take bacteriological samples, by failing to collect four repeat samples for each total coliform-positive sample found, and by exceeding the maximum contaminant level for total coliform bacteria; PENALTY: $3,140; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(13) COMPANY: William R. Massey, Ltd. dba Lubrication Service, Inc.; DOCKET NUMBER: 2005-0387-UIC-E; IDENTIFIER: Solid Waste Registration Number 83938, RN100636893; LOCATION: Odessa, Ector County, Texas; TYPE OF FACILITY: industrial machining; RULE VIOLATED: 30 TAC §331.5(a) and the Code, §26.121(a) and §27.011, by allegedly having operated a Class V injection well in a manner which would allow the pollution of an underground source of drinking water; PENALTY: $400; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(14) COMPANY: Mazen, Inc. dba Truck N Travel; DOCKET NUMBER: 2005-0232-PST-E; IDENTIFIER: PST Facility Identification Number 47792, RN101559672; LOCATION: Weatherford, Parker County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $3,280; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Walid Ak Husein dba McClains Food Store; DOCKET NUMBER: 2005-0330-PST-E; IDENTIFIER: PST Facility Identification Number 4718, RN102031150; LOCATION: Ennis, Ellis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,680; ENFORCEMENT COORDINATOR: Howard Willoughby, (361) 825-3100; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Navi Food and Fuel L.L.C. dba Navi Food & Fuel; DOCKET NUMBER: 2003-0194-PST-E; IDENTIFIER: PST Facility Identification Number 0047142, RN102374907; LOCATION: Winnie, Chambers County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily inspections for the Stage II vapor recovery system (VRS) and by failing to

conduct monthly inspections of the Stage II VRS components; 30 TAC §115.246(1) and (3) and THSC, §382.085(b), by failing to maintain a copy of the California Air Resources Board Executive Order and by failing to maintain a log for all repair/replacements conducted; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training and instruction in the operation and maintenance of the Stage II VRS; and 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each dispenser; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: City of New Summerfield; DOCKET NUMBER: 2004-1082-MWD-E; IDENTIFIER: TPDES Permit Number 0013585001, RN101918282; LOCATION: New Summerfield, Cherokee County, Texas; TYPE OF FACILITY: domestic wastewater system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0013585001, and the Code, §26.121(a), by failing to comply with their permit limits for biochemical oxygen demand; PENALTY: $3,340; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(18) COMPANY: Rohm and Haas Texas, Incorporated; DOCKET NUMBER: 2003-0610-MLM-E; IDENTIFIER: Air Account Number HG-0632-T, Industrial Solid Waste Registration Number 30041, RN100223205; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §117.205(d)(1) and §117.520(c)(1), and THSC, §382.085(b), by failing to have reasonably available control technology installed and by exceeding the regulatory limit of two grams of nitrogen oxides per horsepower hour; 30 TAC §§101.20(1) and (2), 115.352(4), 115.354(2)(B) - (D), 116.115(c), and 335.112(a)(20), Air Permit Numbers 8838 and 29010, 40 CFR §§60.482-2(a)(1), 60.482-7(a), 63.163(b)(1), 63.168(b), 63.173(a)(1), 63.174(b), 265.1054(a), 265.1057(a), 265.1063(b) and (c), and 365.1052(a), and THSC, §382.085(b), by failing to monitor pumps, by failing to monitor agitators, valves, and pumps on a monthly basis and connectors on a yearly basis, and by failing to equip open-ended valves with a cap, blind-flange, or plug; THSC, §382.085(b), by allowing the release of unauthorized emissions; 30 TAC §335.112(a)(20) and 40 CFR §265.1050(c) and §265.1063(b), by failing to mark each piece of equipment in such a manner that it can be distinguished readily from other pieces of equipment and by failing to calibrate the monitoring instruments; and 30 TAC §335.6(c), by failing to make the required updates and corrections to the notice of registration; PENALTY: $87,775; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Rudolph Foods Company, Inc.; DOCKET NUMBER: 2005-0016-AIR-E; IDENTIFIER: Air New Source Registration Number 53816, RN104373402; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: pork rind snack manufacturing; RULE VIOLATED: 30 TAC §111.111(a)(1)(B) and THSC, §382.085(b), by failing to prevent the visible emissions from any vent from exceeding an opacity measuring 20% averaged over a six-minute period; PENALTY: $2,200; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Saint-Gobain Ceramics & Plastics, Inc. dba Saint-Gobain Norpro; DOCKET NUMBER: 2005-0095-AIR-E; IDENTIFIER: Air Account Number BM0026Q, RN100213859; LOCATION: Bryan, Brazos County, Texas; TYPE OF FACILITY: ceramic carriers manufacturing; RULE VIOLATED: 30 TAC §122.121 and §122.130(b) and THSC, §382.054 and §382.085(b), by failing to obtain a federal site operating permit; PENALTY: $2,080; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(21) COMPANY: Spencer Road Public Utility District; DOCKET NUMBER: 2005-0399-MWD-E; IDENTIFIER: TPDES Permit Number 11472-001, RN102097508; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11472-001, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for ammonia; PENALTY: $2,800; ENFORCEMENT COORDINATOR: Kensley Greuter, (512) 239-2520; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Sunoco, Inc. (R&M); DOCKET NUMBER: 2005-0188-AIR-E; IDENTIFIER: Air Account Number HG0825G, RN102888328; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Air Permit Number 5572B, and THSC, §382.085(b), by failing to limit emissions from the C-Flare; PENALTY: $2,780; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Texas H&M Inc. dba FM Deli Beer & Wine; DOCKET NUMBER: 2004-2126-PST-E; IDENTIFIER: PST Facility Identification Number 16028, RN101751824; LOCATION: Flower Mound, Denton County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor for releases; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition; PENALTY: $7,490; ENFORCEMENT COORDINATOR: Cari Bing, (512) 239-1445; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Three Vision II, Inc. dba Park Place Foods; DOCKET NUMBER: 2005-0244-PST-E; IDENTIFIER: PST Facility Identification Number 73844, RN103051918; LOCATION: Manor, Travis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,680; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(25) COMPANY: Antonio Morales dba Tony's Gas For Less; DOCKET NUMBER: 2004-0852-PST-E; IDENTIFIER: PST Facility Identification Number 5524, RN102008760; LOCATION: Sierra Blanca, Hudspeth County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; 30 TAC §334.48(c), by failing to conduct inventory control; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor for releases; 30 TAC §334.127(a)(1) and (d)(3) and the Code, §26.346(a), by failing to timely submit an updated UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate; and 30 TAC §334.55(b), by failing

to remove a UST from the ground in accordance with agency rules; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Cari Bing, (512) 239-1445; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

TRD-200501968
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 17, 2005

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Fort Worth	Dallas Cardiology Associates PA DBA Heartplace Huguley	L05883	Fort Worth	00	04/29/05

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Angleton	Angleton Danbury Hospital District DBA Angleton Danbury Medical Center	L02544	Angleton	31	05/11/05
Arlington	Imaging & Medical Diagnostic Specialists PA DBA Central Imaging of Arlington	L04876	Arlington	06	05/03/05
Austin	Cedra Clinical Research LLC	L05723	Austin	01	05/05/05
Austin	Heart Hospital IV LP DBA Heart Hospital of Austin	L05215	Austin	16	05/02/05
Austin	HTI/ADC Venture DBA North Austin Medical CTR	L04910	Austin	48	04/28/05
Austin	Austin Radiological Association	L00545	Austin	108	05/10/05
Carrollton	Medical Edge Healthcare Group PA DBA James S Rellas MD PA	L05555	Carrollton	03	05/05/05
Corpus Christi	Christus Health DBA Christus Spohn Hospital Memorial	L00265	Corpus Christi	79	05/10/05
Corpus Christi	Coastal Bend Blood Center	L05694	Corpus Christi	03	05/12/05
Crowley	Aztec Manufacturing Partnership LTD	L05056	Crowley	03	04/28/05
Dallas	North Texas Heart Center PA	L04608	Dallas	28	05/06/05
Dallas	Gerald F Bulloch MD PA	L05809	Dallas	01	05/12/05
Edinburg	Doctors Hospital at Renaissance LTD DBA Doctors Hospital at Renaissance	L05761	Edinburg	05	05/09/05
Gruver	Air Products LP	L03181	Gruver	11	05/05/05
Harlingen	Heart Clinic PLLC	L04514	Harlingen	17	05/05/05
Houston	Angiocardiac Care of Texas PA	L05011	Houston	09	05/02/05
Houston	Baker Hughes Oilfield Operations Inc DBA Baker Atlas Houston Technology Ctr	L04452	Houston	38	05/09/05
Houston	Insight Health Corporation	L05504	Houston	04	05/11/04
Houston	Northwest Cardiology Consultants PA	L05795	Houston	03	05/11/05
Houston	Nuclear Imaging Services LLC	L05775	Houston	07	05/11/05
Houston	Northwest Diagnostic Clinic PA	L05814	Houston	02	05/11/05
Huntsville	Services and Compliance Consultants Inc	L03873	Huntsville	18	05/11/05
La Porte	Clean Harbors Deer Park LP	L02870	La Porte	23	05/12/05
Livingston	Memorial Hospital of Polk County DBA Memorial Medical Center Livingston	L05552	Livingston	03	04/29/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Longview	Diagnostic Clinic of Longview PA	L05817	Longview	03	05/11/05
Marble Falls	Austin Heart PA DBA Austin Heart Clinic Marble Falls	L05505	Marble Falls	09	05/02/05
Mesquite	HMA Mesquite Hospitals Inc DBA Medical Center of Mesquite	L02428	Mesquite	41	05/12/05
Odessa	Suresh N Gadasalli MD PA DBA The Healthy Heart Center	L05156	Odessa	11	05/02/05
Orange	Solvay Solexis Inc	L03968	Orange	14	05/05/05
Orange	Baptist Hospitals of Southeast Texas DBA Memorial Hermann Baptist Orange Hospital	L01597	Orange	29	05/11/05
Pasadena	Celanese LTD Clear Lake Plant	L01130	Pasadena	60	05/05/05
Pasadena	Chevron Phillips Chemical Company LP	L00230	Pasadena	73	05/05/05
Plano	Columbia Medical Ctr of Plano Subsidiary LP DBA Medical Center of Plano	L02032	Plano	74	05/02/05
Plano	Presbyterian Hospital of Plano	L04467	Plano	31	04/29/05
Port Arthur	The Premcor Refining Group Inc Port Arthur Refinery	L04871	Port Arthur	07	05/05/05
Port Lavaca	Union Carbide Corporation	L00051	Port Lavaca	81	05/05/05
Round Rock	Austin Heart PA DBA Austin Heart	L05456	Round Rock	11	05/13/05
San Antonio	Heart & Vascular Institute of Texas	L04799	San Antonio	14	05/12/05
San Antonio	Radiology Associates of San Antonio PA DBA Advanced Medical Imaging	L04305	San Antonio	33	05/11/05
San Antonio	Radiology Associates of San Antonio PA DBA Advanced Medical Imaging	L05358	San Antonio	17	05/12/05
San Antonio	Radiology Associates of San Antonio PA DBA Advanced Medical Imaging	L04927	San Antonio	21	05/11/05
San Marcos	Austin Heart PA DBA Austin Heart San Marcos	L05452	San Marcos	11	05/02/05
Seguin	Structural Metals Inc	L02188	Seguin	16	04/28/05
Sherman	Scela Inc DBA North Texas Nuclear Pharmacy	L05461	Sherman	05	05/06/05
Sherman	Wilson N Jones Memorial Hospital	L02384	Sherman	31	05/05/05
Sugar Land	E+ PET Imaging XI LP DBA PET Imaging of Sugar Land	L05858	Sugar Land	01	05/05/05
Sugar Land	Texas Oncology PA DBA Texas Oncology Cancer Ctr Sugarland	L05816	Sugar Land	01	05/11/05
Sweeny	Conocophillips Company	L00337	Sweeny	44	05/02/05
Sweetwater	Rolling Plains Memorial Hospital	L02550	Sweetwater	20	05/06/05
The Woodlands	ST Lukes Community Medical Center The Woodlands	L05763	The Woodlands	02	05/06/05
Throughout Tx	Solutia Inc	L00219	Alvin	72	05/11/05
Throughout Tx	Lotus LLC	L05147	Andrews	10	05/12/05
Throughout Tx	Applied Standards Inspection Inc	L03072	Beaumont	89	05/02/05
Throughout Tx	Numed Imaging Centers Inc	L05762	Cleburne	04	04/29/05
Throughout Tx	Wilson Inspection X-Ray Services Inc	L04469	Corpus Christi	50	05/03/05
Throughout Tx	Raba-Kistner Consultants (SW) Inc	L02337	El Paso	21	05/05/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	Cemex El Paso Inc	L04021	El Paso	13	05/11/05
Throughout Tx	Fugro Consultants LP	L05843	Fort Worth	01	05/11/05
Throughout Tx	Mandes Inspection & Testing Services Inc	L05220	Houston	50	05/05/05
Throughout Tx	H & G Inspection Company Inc ADBA Statewide Maintenance Company	L02181	Houston	197	05/10/05
Throughout Tx	D-Arrow Inspection	L03816	Houston	75	05/02/05
Throughout Tx	Longview Inspection Inc	L01774	La Porte	214	05/10/05
Throughout Tx	Mas-Tek Engineering and Associates Inc	L04864	Longview	07	05/09/05
Throughout Tx	Eagle X-Ray	L03246	Mont Belvieu	86	05/12/05
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	92	05/11/05
Throughout Tx	Midwest Inspection Services	L03120	Perryton	78	05/10/05
Throughout Tx	Drash Consulting Engineers Inc	L04724	San Antonio	15	05/05/05
Throughout Tx	GCT Inspection Inc	L02378	South Houston	84	05/11/05
Throughout Tx	Schlumberger Technology Corporation	L01833	Sugar Land	124	05/04/05
Throughout Tx	Apex Geoscience Inc	L04929	Tyler	17	05/11/05
Tyler	Nutech Inc	L04274	Tyler	48	04/28/05
Tyler	East Texas Medical Center	L00977	Tyler	120	05/11/05
Tyler	East Texas Medical Center	L00977	Tyler	121	05/12/05
Uvalde	Uvalde County Hospital Authority DBA Uvalde Memorial Hospital	L03327	Uvalde	13	05/09/05

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Abilene	Abilene Diagnostic Clinic PLLC	L05101	Abilene	11	05/06/05
Amarillo	Cardinal Health	L03398	Amarillo	33	05/05/05
Baytown	Baytown Cardiology Associates	L05040	Baytown	06	04/28/05
Beaumont	Advanced Cardiovascular Specialists LLP	L05512	Beaumont	05	04/28/05
Corpus Christi	Everest Exploration Inc	L03626	Corpus Christi	11	05/02/05
Corsicana	Guardian Industries Corporation	L05213	Corsicana	01	04/28/05
Dallas	Presbyterian Healthcare System DBA Presbyterian Hospital of Dallas	L04288	Dallas	20	05/05/05
El Paso	Pan American General Hospital LLC DBA Pan American Community Hospital	L02338	El Paso	31	05/10/05
Ennis	Ellis County Medical Associates	L05759	Ennis	02	04/28/05
Euless	Cor Specialty Associates of North Texas	L05062	Euless	17	05/06/05
Fort Worth	Kanti C Gandhi MD	L05756	Fort Worth	01	04/28/05
Freeport	Rhodia Electronics and Catalysis Inc	L02807	Freeport	32	05/11/05
Garland	Baylor Medical Center at Garland	L02398	Garland	11	05/10/05
Hillsboro	NHCI Hillsboro Inc DBA Hill Regional Hospital	L01949	Hillsboro	32	05/10/05
Houston	Gulf Coast MRI & Diagnostic Center	L05333	Houston	03	04/28/05
Houston	New Medical Horizons II LTD DBA Cypress Fairbanks Medical Center	L03424	Houston	26	04/28/05

CONTINUED RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Columbia/HCA Healthcare Corp DBA Spring Branch Medical Center	L02473	Houston	51	05/10/05
Katy	St Catherine Health and Wellness Center	L05310	Katy	07	04/28/05
Kingwood	Lieber-Moore Cardiology Associates DBA Texas Cardiology Associates	L04622	Kingwood	08	05/16/05
La Grange	Austin Heart La Grange	L05516	La Grange	08	04/28/05
La Porte	Cardiorad Inc	L05755	La Porte	04	04/28/05
Mansfield	FTI Industries Inc	L02810	Mansfield	12	05/11/05
Marble Falls	Austin Heart PA DBA Austin Heart Clinic Marble Falls	L05505	Marble Falls	08	04/28/05
McAllen	Cardiovascular Consultants of McAllen PA	L05126	McAllen	15	04/28/05
McAllen	Rio Grande Heart Specialist of South Texas DBA Rio Grande Heart Specialist	L05509	McAllen	02	04/28/05
Midland	Midland County Hospital District DBA Midland Memorial Hospital	L00728	Midland	75	05/12/05
Midland	West Texas Nuclear Pharmacy Partners	L04573	Midland	14	05/12/05
Midlothian	Ash Grove Texas LP	L05424	Midlothian	02	04/28/05
Orange	Baptist Hospitals of Southeast Texas DBA Memorial Hermann Baptist Orange Hospital	L01597	Orange	28	04/29/05
Pasadena	Nuclear Medicine Associates PA	L05712	Pasadena	03	04/28/05
Pasadena	Mohamed O Jeroudi MD PA	L05753	Pasadena	06	04/28/05
Sugar Land	Southwest Cardiology Associates	L05749	Sugar Land	02	04/28/05
Sunray	Diamond Shamrock Refining Company LP	L04398	Sunray	13	04/28/05
The Woodlands	The Woodlands Sports Medicine Centre PA	L04390	The Woodlands	12	05/04/05
Throughout Tx	Ramming Paving CO LTD	L04666	Austin	04	05/12/05
Throughout Tx	JRJ Paving Inc	L05307	Dallas	02	04/28/05
Throughout Tx	Pavetex Engineering and Testing Inc	L05533	Dripping Springs	03	04/28/05
Throughout Tx	Licon Engineering Company Inc	L05530	El Paso	04	04/28/05
Throughout Tx	Landtec Engineers LLC	L05341	Fort Worth	01	04/28/05
Throughout Tx	Site Concrete Inc	L05025	Grand Prairie	06	04/28/05
Throughout Tx	A & R Engineering and Testing Inc	L05318	Houston	03	04/28/05
Throughout Tx	Insight Health Corporation	L05504	Houston	03	04/28/05
Throughout Tx	Solum Engineering Inc	L05770	Missouri City	02	04/28/05
Throughout Tx	Intec	L05150	San Antonio	06	04/28/05
Throughout Tx	Newpark Environmental Services of Texas LP	L04999	Winnie	09	04/28/05
Tomball	Cardiovascular Institute PA	L05740	Tomball	01	04/28/05
Victoria	Victoria Heart & Vascular Center	L05748	Victoria	02	04/28/05

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	American Diagnostic Medicine Inc DBA First PET of Houston	L05394	Houston	03	05/03/05
Throughout Tx	Lindsey Contractors Inc	L05343	Waco	05	05/04/05

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200501974
Cathy Campbell
General Counsel
Department of State Health Services
Filed: May 17, 2005

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Notice of Agreed Order with HVJ Associates, Inc.

On May 11, 2005, the Radiation Program Officer, Department of State Health Services (department), approved the settlement agreement between the department and HVJ Associates, Inc. (licensee-L03813) of Houston. A total administrative penalty in the amount of $1,000 was assessed the licensee for violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200501942
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: May 13, 2005

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Notice of Amendment Number 34 to the Radioactive Material License of Waste Control Specialists, LLC

Notice is hereby given by the Department of State Health Services (department), Radiation Safety Licensing Branch, that it has amended Radioactive Material License Number L04971 issued to Waste Control Specialists, LLC (WCS) located in Andrews County, Texas, one mile North of State Highway 176; 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas.

Amendment number 34 modifies License Condition 19.C to provide additional clarification that existing authorizations for possession of transuranic waste in concentrations exceeding 100 nanocuries per gram, is limited to that generated by the United States Department of Energy (DOE).

The department has determined that the amendment of the license and the documentation submitted by the licensee provide reasonable assurance that the licensee's radioactive waste processing facility is operated in accordance with the requirements of 25 Texas Administrative Code (TAC), Chapter 289; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a public hearing, upon written request, within 30 days of the date of publication of this notice by a person affected as set out in 25 TAC, §289.205(f). A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to a county, in which the radioactive material is or will be located; or (b) doing business or has a legal interest in land in the county or adjacent county.

A person affected may request a hearing by writing Mr. Richard A. Ratliff, P.E., Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas, 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the agency action will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, Chapter 401, the Administrative Procedure Act (Texas Government Code, Chapter 2001), the formal hearing procedures of the department (25 TAC, §1.21 et seq.) and the procedures of the State Office of Administrative Hearings (1 TAC, Chapter 155).

A copy of the license amendment and supporting materials are available, by appointment, for public inspection and copying at the office of the Radiation Safety Licensing Branch, Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m., Monday-Friday (except holidays). Information relative to inspection and copying the documents may be obtained by contacting Chrissie Toungate, Custodian of Records, Radiation Safety Licensing Branch.

TRD-200501943
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: May 13, 2005

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number TX 05-001, Amendment Number 698, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

Amendment Number 698 provides for Upper Payment Limits (UPL) payments for inpatient and outpatient services providers by non-publicly owned hospitals in Webb, Montgomery, Hidalgo, Bexar, Potter, Randall, and Midland counties for services provided to Medicaid patients. The supplemental payments shall not exceed the difference between total annual Medicaid payments and the federal upper payment limits established in 42 CFR 447.272. As a result, the State seeks to ensure that Medicaid payments are commensurate with Medicare payments and/or payment principles.

The proposed amendment is to be effective May 28, 2005, and is expected to increase the amount of federal matching funds to the State. The proposed amendment is estimated to result in increased annual aggregate expenditures of $33,687,741 with increased federal matching funds of $20,505,728 for State fiscal year 2005, and $128,083,600 with increased federal matching funds of $77,695,511 for State fiscal year 2006.

If additional information is needed, please contact Arnulfo Gomez by telephone at (512) 491-1166 or by e-mail at arnulfo.gomez@hhsc.state.tx.us.

TRD-200501944
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: May 13, 2005

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Texas Health Reinsurance System

Texas Health Reinsurance System Board of Directors' Meeting
James L. Nelson, Chairman

June 8, 2005

8:30 A.M.

Location: 333 Guadalupe, Hobby One, Room 1264

AGENDA

1. Call to Order.

2. Review and vote on minutes of the last Board meeting.

3. Participation by the Public (At this time, the public will be invited to address the Board of Directors on any matter not listed on this Agenda).

4. Discussion and/or action on retention of legal counsel for the Texas Health Reinsurance System.

5. Presentation of, and discussion and/or action on, the Report of the Administrator of the Texas Health Reinsurance System.

6. Discussion of and possible action on Adjustment/Trend Factors effective 8/1/05 through 7/31/06.

7. Reports from Standing or Special Committees.

8. Discussion and/or action on expenditures of the System, including directors' and officers' insurance coverage.

9. Discussion and/or action on the Commissioner's request for the Board's response to his questions posed to the Board in a letter dated May 16, 2005, concerning the true up of the System's assessments adopted by the Board on November 11, 2004.

10. Reconsideration of the Board's November 11, 2004 decision concerning true up of the System's assessments, as requested by reinsured carriers.

11. Discussion and/or action on SUBPOENA REQUIRING PRODUCTION OF DOCUMENTS served on the Texas Health Reinsurance System in the case of **Humana Insurance Company v. Texas Health Insurance Risk Pool.**

12. Discussion and/or action on assessment of carriers by the System.

13. Executive Session. The Board may convene in executive session under Government Code §551.071 and §551.079 for the purpose of consulting with counsel about the possibility of litigation with reinsured carriers other possible actions. The board may take action on any of the matters discussed when it reconvenes in open session.

14. Report of Compliance Review results obtained from selected reinsured carriers for calendar 2004.

15. Presentation of a legislative update concerning activity of the 79th Legislature affecting or of interest to the System and Board.

16. The Board will take up for discussion and/or action on, the following matters concerning the THRS Plan of Operation.

A. Periodic specific review of System performance in support of Chapter 1501, Subchapter G, and identification of areas indicating consideration for action.

B. Ongoing review of internal controls present in the Plan of Operation to assure that reinsured carriers are complying with the provisions of §1501.317 concerning application of managed care procedures and also complying with any Plan of Operation provisions addressing that subject matter.

C. Systematic and scheduled review, for appropriate action, of

(1) rates for reinsurance coverages,

(2) the benefit plan design (with specific focus on appropriate loss control and the System's 5% limit on the ratio of annual net losses to small employer health plan premiums),

(3) possible internal controls to assure validity of ceding of lives to the System, and

(4) all communication programs with reinsured carriers to assure ongoing sufficient notice and disclosure to such carriers about System operations.

D. Review for adjustment as needed, the initial level of benefits and maximum liability limit to be retained by reinsured carriers to reflect increases in both costs and utilization for small employer health benefit plans in Texas

17. Review and discussion and/or action on a plan to review the administrative services contract items at scheduled intervals, including present contract provisions, to identify for timely action the revision or incorporation of specific standards for performance which are sufficient to meet ongoing needs of the Board in fulfillment of its duties.

18. Review and discussion and/or action on targeted strategies and tactics for Plan of Operation refinement to enhance overall operational efficiency, including timetables for completion of particular strategies.

19. Discussion and/or action on membership of the Committees of the Board.

20. Consideration of any further business including next meeting of the Board.

21. Adjournment.

TRD-200501993
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Health Reinsurance System
Filed: May 18, 2005

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Texas Department of Insurance

Company Licensing

Application to change the name of UBS PAINEWEBBER LIFE INSURANCE COMPANY to UBS LIFE INSURANCE COMPANY USA, a foreign life, accident and/or health company. The home office is in San Francisco, California.

Application for incorporation to the State of Texas by CENPATICO BEHAVIORAL HEALTH OF TEXAS, INC., a domestic Health Maintenance Organization. The home office is in Austin, Texas.

Application for EL PASO FIRST HEALTH PLANS, INC., to use the assumed name PREMIER ADVANTAGE PLAN a domestic Health Maintenance Organization. The home office is in El Paso, Texas.

Application for EL PASO FIRST HEALTH PLANS, INC., to use the assumed name JUST FOR KIDS a domestic Health Maintenance Organization. The home office is in El Paso, Texas.

Application for EL PASO FIRST HEALTH PLANS, INC., to use the assumed name THOMASON PREFERRED a domestic Health Maintenance Organization. The home office is in El Paso, Texas.

Application for EL PASO FIRST HEALTH PLANS, INC., to use the assumed name EPF GROUP HEALTH a domestic Health Maintenance Organization. The home office is in El Paso, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701, within 20 days after this notice is published in the *Texas Register*.

TRD-200501983
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: May 18, 2005

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Texas Lottery Commission

Instant Game Number 566 "Weekly Grand"

1.0 Name and Style of Game.

A. The name of Instant Game No. 566 is "WEEKLY GRAND". The play style for Game 1 is "yours beats theirs"; the play style for Game 2 is "key symbol match"; and the play style for Game 3 is "key symbol match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 566 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 566.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, $1.00, $2.00, $4.00, $5.00, $10.00, $40.00, $100, $300, MONEY BAG SYMBOL, GOLD BAR SYMBOL, POT OF GOLD SYMBOL, TOP HAT SYMBOL, CLOVER SYMBOL, DIAMOND SYMBOL, and GRAND SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 566 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
GRAND SYMBOL	WEEK
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$40.00	FORTY
$100	ONE HUND
$300	THR HUND
CLOVER SYMBOL	CLVR
DIAMOND SYMBOL	DIAMD
GOLD BAR SYMBOL	GOLD
POT OF GOLD SYMBOL	POTGLD
MONEY BAG SYMBOL	MBAG
TOP HAT SYMBOL	TPHAT

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 566 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $40.00 or $300.

I. High-Tier Prize - A prize of $1,000/wk ($1,000 per week for 20 years).

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (566), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 566-0000001-001.

L. Pack - A pack of 'WEEKLY GRAND" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 003 and 004 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in a A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery 'WEEKLY GRAND" Instant Game No. 566 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "WEEKLY GRAND" Instant Game is determined once the latex on the ticket is scratched off to expose 15 (fifteen) play symbols. In Game 1, if the player's YOUR NUMBER beats THEIR NUMBER, in any one row across, the player will win the prize for that row. If the player reveals the GRAND symbol, the player will win $1,000 per week for 20 years. In Game 2, if the player matches 3 identical amounts, the player will win that amount. If the player reveals 3 GRAND symbols, the player will win $1,000 per week for 20 years. In Game 3, if the player matches 2 out of 3 symbols, the player will win $20 automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 15 (fifteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 15 (fifteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 15 (fifteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 15 (fifteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No three or more like non-winning prize symbols on a ticket.

C. Non-winning prize symbols will not match a winning prize symbol on a ticket.

D. The GRAND symbol may only be used in Games 1 and 2.

E. Game 1: No ties between Yours and Theirs in a row.

F. Game 1: No duplicate games on a ticket.

G. Game 1: No duplicate non-winning prize symbols on a ticket.

H. Game 2: No 4 or more of a kind.

2.3 Procedure for Claiming Prizes.

A. To claim a 'WEEKLY GRAND" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00 or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $40.00 or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. When claiming a "WEEKLY GRAND" Instant Game prize of $1,000 per week for 20 years, the claimant must choose one of four (4) payment options for receiving his prize:

1. Weekly via wire transfer to the claimant/winner's account. This will be similar to the current "WEEKLY GRAND" (Game 173) payment process. With this plan, a payment of $1,000.00 less Federal withholding will be made once a week for twenty years. After the initial payment, installment payments will be made every Wednesday.

2. Monthly via wire transfer to the claimant/winner's account. If the claim is made during the month, the claimant/winner will still receive the entire month's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of $4,337.00 less Federal withholding will be made the month of the claim. Each additional month, a payment of $4,333.00 less Federal withholding will be made once a month for 20 years. After the initial payment, installment payments will be made on the first business day of each month.

3. Quarterly via wire transfer to the claimant/winner's account. If the claim is made during the quarter, the claimant/winner will still receive the entire quarter's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of $13,000.00 less Federal withholding will be made each quarter (four times a year) for 20 years. After the initial payment, installment payments will be made on the first business day of the first month of every quarter (January, April, July, October).

4. Annually via wire transfer to the claimant/winner's account. These payments will be made in a manner similar to how jackpot payments are currently handled. With this plan, a payment of $52,000.00 less Federal withholding will be made once a year during the anniversary month of the claim for 20 years. After the initial payment, installment payments will be made on the first business day of the anniversary month.

C. As an alternative method of claiming a "WEEKLY GRAND" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, or $300, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the 'WEEKLY GRAND" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the 'WEEKLY GRAND" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose

signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 35,040,000 tickets in the Instant Game No. 566. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 566 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	3,644,160	9.62
$4	2,873,280	12.20
$5	140,160	250.00
$10	490,560	71.43
$20	315,360	111.11
$40	210,240	166.67
$300	11,826	2,962.96
$1,000/WK	4	8,760,000.00

* The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.56. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 566 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 566, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501950
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 16, 2005

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Instant Game Number 585 "$300,000 Mega Money"

1.0 Name and Style of Game.

A. The name of Instant Game No. 585 is "$300,000 MEGA MONEY". The play style for game 1 is "key number match". The play style for game 2 is match up with prize legend. The play style for game 3 is "key number match with multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 585 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 585.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $1.00, $2.00, $3.00, $5.00, $10.00, $20.00, $30.00, $60.00, $100, $300, $3,000, $30,000, $300,000, BELL SYMBOL, DIAMOND SYMBOL, GOLD BAR SYMBOL, DOLLAR BILL SYMBOL, MONEY BAG SYMBOL, COIN SYMBOL, HORSE SHOE SYMBOL, STAR SYMBOL, CLOVER SYMBOL, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 10X SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 585 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$30.00	THIRTY
$60.00	SIXTY
$100	ONE HUND
$300	THR HUND
$3,000	THR THOU
$30,000	30 THOU
$300,000	300 THOU
BELL SYMBOL	BELL
DIAMOND SYMBOL	DMND
GOLD BAR SYMBOL	BAR
DOLLAR BILL SYMBOL	DOLR
MONEY BAG SYMBOL	BAG
COIN SYMBOL	COIN
HORSE SHOE SYMBOL	SHOE
STAR SYMBOL	STAR
CLOVER SYMBOL	CLVR
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
10X SYMBOL	WINX10

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 585 - 1.2E

CODE	PRIZE
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $10.00, $15.00 or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $60.00, $100 or $300.

I. High-Tier Prize - A prize of $3,000, $30,000 or $300,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (585), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 585-0000001-001.

L. Pack - A pack of "$300,000 MEGA MONEY" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 050 will be exposed on one side of the pack and ticket front 001 on the other side.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$300,000 MEGA MONEY" Instant Game No. 585 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$300,000 MEGA MONEY" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. In Game 1, if the player matches any of the YOUR AMOUNTS play symbols to the LUCKY AMOUNT play symbol, the player wins prize indicated for that game. In Game 2, if the player reveals 3 (three) identical play symbols in a horizontal line in the same play the player wins prize indicated in prize legend. In Game 3, if the player matches any of the YOUR NUMBERS play symbols to either of the WINNING NUMBERS play symbols, the player wins prize shown for that number. If a player reveals a 10X play symbol the player wins 10 times the prize indicated instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Game 1: No duplicate non-winning symbols in this game.

C. Game 2: No duplicate non-winning plays in any order.

D. Game 2: There will be no three like non-winning play symbols in a horizontal row which consists of two plays.

E. Game 3: No duplicate Winning Numbers play symbols on a ticket.

F. Game 3: No 3 or more like non-winning prize symbols on a ticket.

G. Game 3: The "10X" symbol will only appear on winning tickets as dictated by the prize structure.

H. Game 3: No duplicate non-winning Your Number play symbols on a ticket.

I. Game 3: No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "$300,000 MEGA MONEY" Instant Game prize of $10.00, $15.00, $20.00, $30.00, $60.00, $100 or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $60.00, $100 or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$300,000 MEGA MONEY" Instant Game prize of $3,000, $30,000 or $300,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$300,000 MEGA MONEY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$300,000 MEGA MONEY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "$300,000 MEGA MONEY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game No. 585. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 585 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	571,200	7.14
$15	244,800	16.67
$20	224,400	18.18
$30	204,000	20.00
$60	74,800	54.55
$100	20,740	196.72
$300	2,652	1,538.46
$3,000	12	340,000.00
$30,000	9	453,333.33
$300,000	3	1,360,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.04. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 585 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 585, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501951
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 16, 2005

♦ ♦ ♦

Instant Game Number 594 "Diamond Mine"

1.0 Name and Style of Game.

A. The name of Instant Game No. 594 is "DIAMOND MINE". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 594 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 594.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59 and 60.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 594 - 1.2D

PLAY SYMBOL	CAPTION
01	
02	
03	
04	
05	
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07	
08	
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11	
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47	
48	
49	
50	
51	
52	
53	
54	
55	
56	
57	
58	
59	
60	

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 594 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $50.00, $100 or $500.

I. High-Tier Prize - A prize of $1,000 or $50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (594), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 594-0000001-001.

L. Pack - A pack of "DIAMOND MINE" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "DIAMOND MINE" Instant Game No. 594 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "DIAMOND MINE" Instant Game is determined once the latex on the ticket is scratched off to expose 62 (sixty-two) Play Symbols. The player must scratch all 28 (twenty-eight) numbers in the YOUR NUMBERS play area. The player must reveal all numbers on Diamonds 1, 2, 3 and 4 that match the numbers revealed in the YOUR NUMBERS area. If a player matches any of YOUR NUMBERS play

symbols to the numbers in Diamonds 1, 2, 3 or 4 in a complete horizontal line the player wins prize shown for that line. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 62 (sixty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 62 (sixty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 62 (sixty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 62 (sixty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. There will never be more than two wins on a single Diamond.

C. There will never be two identical Diamonds on one ticket.

D. No duplicate numbers will appear on the YOUR NUMBERS play spots or on any one of the four Diamonds on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "DIAMOND MINE" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "DIAMOND MINE" Instant Game prize of $1,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "DIAMOND MINE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "DIAMOND MINE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "DIAMOND MINE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 594. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 594 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	604,800	8.33
$10	403,200	12.50
$15	134,400	37.50
$20	117,600	42.86
$30	16,800	300.00
$50	67,200	75.00
$100	7,980	631.58
$500	966	5,217.39
$1,000	210	24,000.00
$50,000	7	720,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.72. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 594 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 594, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501952
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 16, 2005

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Instant Game Number 601 "Deuces Wild"

1.0 Name and Style of Game.

A. The name of Instant Game No. 601 is "DEUCES WILD". The play style is "yours beats theirs with bonus game feature".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 601 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 601.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 2, 3, 4, 5, 6, 7, 8, 9, 10, J, Q, K, A, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $250, $2,500 and $25,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 601 - 1.2D

PLAY SYMBOL	CAPTION
2	WIN ALL
3	THREE
4	FOUR
5	FIVE
6	SIX
7	SEVEN
8	EIGHT
9	NINE
10	TEN
J	JACK
Q	QUEEN
K	KING
A	ACE
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$250	TWO FTY
$2,500	25 HUND
$25,000	25 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 601 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00 or $250.

I. High-Tier Prize - A prize of $2,500 or $25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine

(9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (601), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 601-0000001-001.

L. Pack - A pack of "DEUCES WILD" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 003 and 004 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in a A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "DEUCES WILD" Instant Game No. 601 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "DEUCES WILD" Instant Game is determined once the latex on the ticket is scratched off to expose 31 (thirty-one) Play Symbols. If a player's YOUR CARD play symbol is greater than the DEALER'S CARD play symbol within a game the player wins prize indicated for that game. If a player reveals a deuce "2" symbol in the Bonus game the player wins all 10 (ten) prizes shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 31 (thirty-one) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 31 (thirty-one) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 31 (thirty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 31 (thirty-one) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning games on a ticket.

C. No 3 or more like non-winning prize symbols on a ticket.

D. The deuce symbol will only appear in the BONUS GAME and will only appear as dictated by the prize structure.

E. When the deuce symbol appears in the BONUS GAME, no Your Card will be higher than the Dealer's Card within any of the ten games.

F. No more than 2 duplicate non-winning Your Card or Dealer's Card play symbols.

G. No ties between Your Card and the Dealer's Card.

2.3 Procedure for Claiming Prizes.

A. To claim a "DEUCES WILD" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $250, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning

ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 or $250 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "DEUCES WILD" Instant Game prize of $2,500 or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "DEUCES WILD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "DEUCES WILD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "DEUCES WILD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 601. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 601 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	1,280,160	7.87
$4	695,520	14.49
$5	120,960	83.33
$10	131,040	76.92
$20	60,480	166.67
$50	44,520	226.42
$250	7,896	1,276.60
$2,500	44	229,090.91
$25,000	13	775,384.62

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.31. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 601 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 601, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501953
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 16, 2005

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Instant Game Number 602 "Bonus Break the Bank"

1.0 Name and Style of Game.

A. The name of Instant Game No. 602 is "BONUS BREAK THE BANK". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 602 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 602.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, STACK OF BILLS SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $500, $1,000, $7,500 or $75,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 602 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
STACK OF BILLS SYMBOL	WIN$
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$

$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$7,500	75 HUND
$75,000	75 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 602 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100 or $500.

I. High-Tier Prize - A prize of $1,000, $7,500 or $75,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (602), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 602-0000001-001.

L. Pack - A pack of "BONUS BREAK THE BANK" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BONUS BREAK THE BANK" Instant Game No. 602 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BONUS BREAK THE BANK" Instant Game is determined once the latex on the ticket is scratched off to expose 38 (thirty-eight) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the LUCKY NUMBERS play symbols within the same game the player wins prize indicated for that number. If a player reveals a money stack play symbol the player wins prize indicated automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 38 (thirty-eight) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 38 (thirty-eight) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 38 (thirty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 38 (thirty-eight) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Your Numbers on a ticket.

C. No duplicate Lucky Numbers on a ticket.

D. No more than four like non-winning prize symbols on a ticket.

E. A non-winning prize symbol will never be the same as a winning prize symbol.

F. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

G. The auto win symbol will never appear more than once in a game, but may appear once in both games on tickets that win 2 or more times.

H. No Your Number play symbol in one game will match a Lucky Number play symbol in the other game.

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS BREAK THE BANK" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BONUS BREAK THE BANK" Instant Game prize of $1,000, $7,500 or $75,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BONUS BREAK THE BANK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BONUS BREAK THE BANK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "BONUS BREAK THE BANK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,000,000 tickets in the Instant Game No. 602. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 602 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	2,800,000	5.36
$10	1,000,000	15.00
$15	400,000	37.50
$20	200,000	75.00
$50	200,000	75.00
$100	37,500	400.00
$500	2,000	7,500.00
$1,000	375	40,000.00
$7,500	40	375,000.00
$75,000	21	714,285.71

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.23. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 602 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 602, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501954
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 16, 2005

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Manufactured Housing Division

Notice of Administrative Hearing

Wednesday, June 15, 2005, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor,

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. Interstate Repos Inc., to hear alleged violations of Sections 1201.451, 1201.551(a)(3) and (6), 1201.153, 1201.455(a), 1201.107(b), and 1201.256(d), 1201.361, of the Act and Sections 80.50(e), 80.123(b)(7) and 80.119(f) of the Rules by selling a manufactured home, and failing to deliver a good and marketable title to consumers after receiving written notice, and selling manufactured homes without providing consumers with proper notices, warranties and disclosures. SOAH 332-05-6474. Department MHD2005000531-LRV.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, james.hicks@tdhca.state.tx.us

TRD-200501971
Timothy K. Irvine
Executive Director
Manufactured Housing Division
Filed: May 17, 2005

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North Central Texas Council of Governments

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the December 17, 2004 issue of the Texas Register (29 TexReg 11809). The selected consultant will perform technical and professional work for the Dallas-Fort Worth (DFW) Airport Intelligent Transportation System (ITS) Master Plan.

The consultant selected for this project is PB Farradyne, a District of Parsons Brinckerhoff Quade & Douglas, Inc., 2777 N. Stemmons Freeway, Suite 1333, Dallas, Texas 75207. The maximum amount of this contract is $229,471.

TRD-200501991

R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: May 18, 2005

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Request for Proposals

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments is seeking written proposals from consultants to conduct a review of area and non-road emissions control strategies for nitrogen oxides (NOx) and volatile organic compounds (VOCs) for the North Central Texas Ozone Nonattainment Area. Specifically, this study will require the development of a catalog of applicable control strategies targeting NOx and VOC emissions from area and non-road sources, including a quantification of emission benefits for inclusion into an air chemistry photochemical model. This project will be funded through the 2004- 2005 Unified Planning Work Program through funds provided by the Texas Commission on Environmental Quality (TCEQ). Engineering services are not anticipated for this study. This effort is important to the North Central Texas region as the results will assist in the development of the new 8-Hour Ozone State Implementation Plan for Air Quality being developed by TCEQ.

Due Date

Proposals must be received no later than 5 p.m. Central Daylight Time on Friday, June 10, 2005, to Chris Klaus, Senior Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Therese Bergeon, at (817) 695-9267. Questions concerning the Instructions For Proposals or the Scope of Services should be submitted to Ken Kirkpatrick, Senior Program Manager, by email at kkirkpatrick@nctcog.org by Friday, June 3, 2005.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200501994
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: May 18, 2005

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Request for Proposals

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals for the development of an Intelligent Transportation System (ITS) data archiving software plug-in to communicate with center-to-center communication software. This effort should accomplish the following goals: 1) conduct a study to prioritize data archival needs with a data prioritization plan for NCTCOG internal use as well as for regional use; 2) provide an automated system to collect information from Center-to-Center (C2C) infrastructure and populate information into the NCTCOG database; 3) provide flexibility to select different types of information available through C2C infrastructure for a user-defined time interval and spatial reference; and 4) develop a tool to check data accuracy prior to importing into the NCTCOG database.

Due Date

Proposals must be received no later than 5 p.m. Central Daylight Time on Friday, June 24, 2005, to Natalie Bettger, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Therese Bergeon, at (817) 695-9267. Questions concerning the Instructions For Proposals or the Scope of Services should be submitted to Ken Kirkpatrick, Senior Program Manager, by email at kkirkpatrick@nctcog.org by Friday, June 10, 2005.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200501995
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: May 18, 2005

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Texas Parks and Wildlife Department

Notice of Availability and Opportunity for Comment

The Texas Parks and Wildlife Department is soliciting comments on an Environmental Assessment (EA) of the environmental effects of sinking the ship *USTS Texas Clipper* as an artificial reef in federal waters

off Texas. This EA is prepared in accordance with the National Environmental Policy Act (NEPA) of 1969. The proposed action to sink the ship as an artificial reef at a permitted reef site will enhance natural fisheries habitat, provide habitat for threatened and endangered species, and benefit the public with increased fishing and diving opportunities.

The EA and additional contact information may be obtained from the Texas Parks and Wildlife web site (http://www.tpwd.state.tx.us/publications/water_fishing/pdf_docs/pwd_rp_v3400_1061.pdf or by written request or e-mail to:

Paul Hammerschmidt, Artificial Reef Program Director, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, TX 78744, paul.hammerschmidt@tpwd.state.tx.us

Or

Dale Shively, Artificial Reef Program Coordinator, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, TX 78744, dale.shively@tpwd.state.tx.us

TRD-200501981
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: May 18, 2005

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On May 9, 2005, American Farm Bureau, Incorporated filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60661. Applicant intends to reflect a change in ownership/control and a change in service area.

The Application: Application of American Farm Bureau, Incorporated for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 31076.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 1, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31076.

TRD-200501933
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 12, 2005

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Notice of Application for an Amendment to its Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.418

Notice is given to the public of an application filed with the Public Utility Commission of Texas on May 13, 2005, for an amendment to its designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Santa Rosa Telephone Cooperative, Inc. to amend its Designation as an Eligible Telecommunications Carrier (ETC). Docket Number 31097.

The Application: The company is requesting an amendment to its ETC designation to include the exchange of Munday, in which Valor Telecommunications of Texas, LP is the incumbent provider. The company holds Service Provider Certificate of Operating Authority Number 60373.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 16, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31097.

TRD-200501979
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 18, 2005

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Notice of Application for an Amendment to its Designation as an Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.417

Notice is given to the public of an application filed with the Public Utility Commission of Texas on May 13, 2005, for an amendment to its designation as an eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.417.

Docket Title and Number: Application of Santa Rosa Telephone Cooperative, Inc. to amend its Designation as an Eligible Telecommunications Provider (ETP). Docket Number 31098.

The Application: The company is requesting an amendment to its ETP designation to include the exchange of Munday, in which Valor Telecommunications of Texas, LP is the incumbent provider. The company holds Service Provider Certificate of Operating Authority Number 60373.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 16, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31098.

TRD-200501980
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 18, 2005

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Notice of Application for Authority to Surcharge Fuel Under-Recovery

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application for authority to surcharge its fuel under-recovery, and related interest.

Docket Style and Number: Application of Southwestern Public Service Company for Authority to Surcharge its Fuel Under-Recoveries. Docket Number 30165.

The Application: On May 6, 2005, Southwestern Public Service Company (SPS), doing business as Xcel Energy, filed with the Public Utility Commission of Texas (commission) an application for authority to surcharge its fuel under-recovery, and related interest, for the period of October 2004 through March 2005. In accordance with the commission's Substantive Rule §25.237, SPS proposes to surcharge $21,422,666.98 and related interest, over a 12-month period beginning November 2005. This will result in a surcharge of $1.53 for a typical residential customer using 1,000 kWh per month. This would be an approximate net decrease of 1.16% during the summer months and 1.21% in the winter months, or $0.99 on average per month, in his/her electric bill if the proposed surcharge factor is approved.

All classes of SPS's Texas retail customers will be affected by the proposed surcharge, which will become effective beginning November 2005 and remain in effect through October 2006. These charges will be subject to final review by the commission in a future fuel reconciliation proceeding.

Persons with questions or who want more information on this petition may contact Southwestern Public Service Company at 600 S. Tyler Street, Suite 2400, Amarillo, Texas 79101, or call 1-800-895-4999 during normal business hours. A complete copy of this petition is available for inspection at the address listed above. Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or call the commission's Office of Consumer Affairs at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 30165.

TRD-200501961
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 16, 2005

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Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on May 10, 2005, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of ionex telecommunications' request for assignment of a thousands block to offer local service in the Houston suburban rate center.

Docket Title and Number: Application of ionex telecommunications for a State Waiver to Obtain an Individual Growth Block to Offer Local Service in the Houston Suburban Rate Center. Docket Number 31084 .

The Application: ionex telecommunications submitted an application to the Pooling Administrator (PA) for a thousands block in the Houston suburban rate center. The PA denied the request based on the grounds that ionex telecommunications did not fit the three qualifications necessary to obtain the code.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 1, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31084.

TRD-200501934
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 12, 2005

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Texas Residential Construction Commission

Notice of Application for Registration as Approved Third-Party Warranty Company

The commission adopted rules regarding the approval and registration of third-party warranty companies at 10 TAC §§303.250 - 303.266. The new rules were adopted pursuant to under new Chapter 430, Property Code (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01), which provides that a builder may elect to provide a warranty through a third-party warranty company approved by the commission. The commission rules for approval and registration of third-party warranty companies can be found on the commission's website at www.trcc.state.tx.us

Title 10 Texas Administrative Code §303.255 requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice. Information provided in response to this notice will be utilized in evaluating the applicants for approval. Approved third-party warranty companies will be listed on the commission's website.

Pursuant to 10 TAC §303.255 the commission hereby notices the application of:

Professional Warranty Service Corporation, P.O. Box 800, Annandale, Virginia 22003-0800. Professional Warranty Service Corporation is insured by Steadfast Insurance Company. The applicant has identified James Ivan Barnett, c/o CT Corporation System, 350 N. St. Paul, Dallas, Texas 75201, as its registered agent.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, The Texas Residential Construction Commission, P.O. Box 13144, Austin, TX 78711-3144. Comments regarding this application will be accepted for twenty-one days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200501958
Susan Durso
General Counsel
Texas Residential Construction Commission
Filed: May 16, 2005

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Texas Department of Transportation

Notice of Intent

Pursuant to Title 43, Texas Administrative Code, §§2.42(e) and 2.43(c)(3) and 2.43(f)(3), concerning environmental impact statements (EISs), the Texas Department of Transportation (TxDOT) gives notice that a draft environmental impact statement (DEIS) will be prepared for a proposed highway project in Nueces County, Texas, to replace

the existing Harbor Bridge and approaches. The project is at US 181 where it crosses the Corpus Christi Ship Channel, a distance of approximately 2.25 miles in eastern Nueces County.

TxDOT completed a Feasibility Study for the project in June 2003 which evaluated four corridor alternatives along existing right-of-way, new right-of-way, and a no-build alternative. The results of the study identified a recommended study corridor. In conjunction with the Feasibility Study, TxDOT developed a public involvement plan, sponsored three citizens' advisory committee meetings, held two public meetings, and distributed two newsletters.

Now, TxDOT, in cooperation with the Federal Highway Administration (FHWA), will prepare a DEIS. The need for the proposed bridge replacement is based on a number of deficiencies in the existing structure, including high maintenance costs, safety issues, capacity needs, shipping height restrictions, and connectivity to adjacent areas. The project will address these deficiencies, plus consider future plans for US 181 and the area it serves. TxDOT will consider various alternatives including: (1) taking no action, and (2) replacing the existing Harbor Bridge with a facility built to current highway standards. A reasonable number of alignment alternatives will be identified and evaluated in the DEIS, as well as the No-Build Alternative, based on input from federal, state, and local agencies, as well as private organizations and concerned citizens.

Impacts caused by the construction and operation of the proposed improvements would vary according to which alignment is selected. Generally, impacts would include: impacts to residences and businesses, including potential relocation; impacts to parkland; transportation impacts (construction detours, construction traffic, and mobility improvement); air and noise impacts from construction equipment and operation of the roadway; social and economic impacts, including impacts to minority and low-income residents; impacts to historic cultural resources; water quality impacts from construction and roadway runoff; and impacts to waters of the U.S. including wetlands from right-of-way encroachment.

A letter that describes the proposed action and a request for comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in the proposal.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, TxDOT invites comments and suggestions from all interested parties. TxDOT will conduct a continuing public involvement program, including a project mailing list, project newsletters, a June 23, 2005 public scoping meeting (discussed below), and numerous informal meetings with interested citizens and stakeholders. An agency scoping meeting will also be held to brief agency representatives on project plans, introduce project team members, obtain comments pertaining to the scope of the DEIS, identify important issues, set goals, and respond to questions. The Public Scoping Meeting will be held on June 23, 2005 at the Oveal Williams Center (1414 Martin Luther King Drive) in Corpus Christi, Texas with an open house from 5:30pm- 6:30pm, a TxDOT presentation from 6:30pm- 7pm, and a public comment session from 7pm- 8pm. Also, TxDOT will hold a public hearing after the publication of the DEIS. Notice of the public hearing will be published in a local newspaper. The DEIS will be available for public and agency review and comment prior to the public hearing.

Agency Contact: Comments or questions concerning this proposed action and the DEIS should be directed to Ms. Dianna Noble, P.E., Director, Environmental Affairs Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483, (512) 416-3001.

TRD-200501997
Joanne Wright
Associate General Counsel
Texas Department of Transportation
Filed: May 18, 2005

Request for Proposal - Outside Counsel

The Texas Department of Transportation (the "department") requests proposals from law firms interested in representing the department in environmental law matters. This request for proposals (RFP) is issued for the purpose of identifying qualified law firms able to provide legal representation required by the department and the Texas Transportation Commission (the "commission") on legal matters related to compliance with environmental laws, regulations, and rules, both state and federal, affecting the department, and as more fully set out as follows. Selection of outside counsel will be made by the department's General Counsel. The Office of the Attorney General must approve the General Counsel's selection before the selected outside counsel may be employed.

Description: The department is a state agency that has the primary responsibility in Texas of constructing and maintaining a state highway system. In connection with that responsibility, the department must deal with various environmental matters affecting such construction and maintenance. These matters include, but are not limited to: obtaining appropriate permits and answering queries and complaints from state and federal regulatory authorities; complying with environmental laws, rules, and regulations, both state and federal, on an ongoing basis; appearing before administrative and judicial tribunals, both state and federal, to answer charges of a civil and criminal nature, both state and federal; and generally complying with those state and federal laws, rules, and regulations applicable to the responsibilities discharged by a state department of transportation. The department intends to engage outside counsel to represent the department in these matters. In particular, the department intends to rely on such outside counsel to represent the department in criminal cases related to these matters. Accordingly, the department invites responses to this RFP from firms that are qualified to perform these legal services. Counsel must have considerable prior experience with, as well as extensive knowledge of, these subjects. Counsel should be experienced in the matter of criminal defense work involving alleged violations of both state and federal environmental laws, rules, and regulations.

Responses: Responses to the RFP may be submitted by an individual law firm, attorney, or joint venture between two or more law firms and/or attorneys. Responses to the RFP should include at least the following information: (1) a description of the firm's qualifications for performing legal work in the matters described previously, the names, experience, education, and expertise of the attorneys who will be assigned to work on these matters, the availability of the lead attorney and other firm personnel who will be assigned to work on these matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of these legal services; (2) information relative to the capabilities, location(s), and resources of the firm's offices that might serve the department's requirements, and an organizational chart indicating the relevant areas of responsibility of each attorney assigned to work on these matters; (3) the submission of fee information (either in the form of hourly rates for each attorney and paralegal who will be assigned to perform services in relation to these matters, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) an abstract of the firm's cost control procedures and how it charges for its services; (5) a comprehensive description of the procedures used by

the firm to supervise the provision of legal services in a timely and cost effective manner; (6) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the Texas Department of Transportation, or to the State of Texas or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (7) confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Attorney General of the State of Texas.

Note: The department is particularly concerned with issues of any conflict of interest(s). Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address such conflicts.

Format and Person to Contact: Two copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8 1/2 by 11 inch paper with all pages sequentially numbered, and either stapled or bound together. It should be sent by mail or delivered in person, marked "Response to Request for Proposal" and addressed to Richard D. Monroe, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, telephone Richard Monroe, General Counsel at (512) 463-8630.

Deadline for Submission of Response: All proposals must be received by the Texas Department of Transportation at the previously stated address no later than 5:00 p.m., on June 20, 2005.

TRD-200501984
Richard D. Monroe
General Counsel
Texas Department of Transportation
Filed: May 18, 2005

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Request for Proposal - Outside Counsel

The Texas Department of Transportation (the "department") requests proposals from law firms interested in representing the department in intellectual property law matters relating to the "Don't Mess With Texas" trademark. This request for proposals (RFP) is issued for the purpose of identifying qualified law firms able to provide legal representation required by the department and the Texas Transportation Commission (the "commission") on legal matters related to the protection of the department's trademark rights in its "Don't Mess With Texas," trademark. Selection of outside counsel will be made by the department's General Counsel. The Office of the Attorney General must approve the General Counsel's selection before the selected outside counsel may be employed.

Description: The department is a state agency that owns trademark rights to the "Don't Mess with Texas" mark. The department intends to engage outside counsel to advise the department on its intellectual property interests in the mark "Don't Mess With Texas," to prosecute petitions with the U.S. Patent and Trademark Office relating to the improper use of the mark by third parties, including the continued prosecution of an action before the Trademark Trial and Appeal Board to cancel the trademark registration of the mark "Don't Mess With Texas," held by another entity, and to prosecute one or more applications with the Patent and Trademark Office for trademark and/or service mark registration of the mark "Don't Mess With Texas." The department invites responses to this RFP from firms that are qualified to perform these legal services. Outside counsel engaged by the department must demonstrate competence and expertise in trademark law. Extensive prior experience in providing legal services relating to the protection of trademarks is required.

Responses: Responses to the RFP may be submitted by an individual law firm, attorney, or joint venture between two or more law firms and/or attorneys. Responses to the RFP should include at least the following information: (1) a description of the firm's qualifications for performing legal work in the matters described previously, the names, experience, education, and expertise of the attorneys who will be assigned to work on these matters, the availability of the lead attorney and other firm personnel who will be assigned to work on these matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of these legal services; (2) information relative to the capabilities, location(s), and resources of the firm's offices which might serve the department's requirements, and an organizational chart indicating the relevant areas of responsibility of each attorney assigned to work on these matters; (3) the submission of fee information (either in the form of hourly rates for each attorney and paralegal who will be assigned to perform services in relation to these matters, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) an abstract of the firm's cost control procedures and how it charges for its services; (5) a comprehensive description of the procedures used by the firm to supervise the provision of legal services in a timely and cost effective manner; (6) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the Texas Department of Transportation, or to the State of Texas or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (7) confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Attorney General of the State of Texas.

Note: The department is particularly concerned with issues of any conflict of interest(s). Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address such conflicts.

Format and Person to Contact: Two copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8 1/2 by 11 inch paper with all pages sequentially numbered, and either stapled or bound together. It should be sent by mail or delivered in person, marked "Response to Request for Proposal" and addressed to Richard D. Monroe, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, telephone Richard Monroe, General Counsel at (512) 463-8630.

Deadline for Submission of Response: All proposals must be received by the Texas Department of Transportation at the previously stated address no later than 5:00 p.m., on June 20, 2005.

TRD-200501985
Richard D. Monroe
General Counsel
Texas Department of Transportation
Filed: May 18, 2005

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University of Houston

Consultant Contract Award Notice

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, The University of Houston furnishes this notice of consultant contract award. The consultant will provide services in the form of electricity restructuring, regulation and issues related to electricity transmission and distribution. Requests for proposals were filed in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1702).

The contract was awarded to Brett Perlman, 2503 Briarpark, Houston, Texas 77042, for a total amount of NTE $40,000.

The beginning date of the contract is May 18, 2005 and the ending date is May 17, 2006.

For further information, please call (713) 743-2785.

TRD-200501956
Brian S. Nelson
Executive Director and Associate General Counsel
University of Houston
Filed: May 16, 2005

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The University of Texas System

Request for Proposal - Consulting Services

The University of Texas at Austin requests, pursuant to the provisions of the *Texas Government Code*, Chapter 2254.029, the submission of proposals leading to the award of a contract for Consulting Services. The University's objective is to contract for Consulting Services to guide and assist the University of Texas Press in clarification of campaign objectives, leadership recruitment, establishing an overall campaign strategy that will include the development of a case statement, the identification and recruitment of campaign steering committee members and submission and presentation of a final written report of the fund raising campaign activities to key University leaders.

An award for the services specified herein will be made following a procedure using competitive sealed proposals.

Proposals will be opened publicly to identify the names of the RESPONDENTS, but will be afforded security sufficient to preclude disclosure of the contents of the proposal, including prices or other information, prior to award. After opening, an award may be made on the basis of the proposals initially submitted, without discussion, clarification, or modification, or on the basis of negotiation with any of the RESPONDENTS or, at UNIVERSITY'S sole option and discretion, UNIVERSITY may discuss or negotiate all elements of the proposal with selected RESPONDENTS which represent a competitive range of proposals. For purposes of negotiation, a competitive range of acceptable or potentially acceptable proposals may be established comprising the highest rated proposal(s). After the submission of a proposal but before making an award, UNIVERSITY may permit the offeror to revise the proposal in order to obtain the best final offer. UNIVERSITY may not disclose any information derived from the proposals submitted from competing offers in conducting such discussions. UNIVERSITY will provide each offeror with an equal opportunity for discussion and revision of proposals. Further action on proposals not included in the competitive range will be deferred pending an award, but UNIVERSITY reserves the right to include additional proposals in the competitive range if deemed in the best interest of UNIVERSITY. UNIVERSITY reserves the right to award a Contract for all or any portion of the requirements proposed by reason of this request, award multiple Contracts, or to reject any and all proposals if deemed to be in the best interests of UNIVERSITY and to re-solicit for proposals, or to reject any and all proposals if deemed to be in the best interests of UNIVERSITY and to temporarily or permanently abandon the procurement. If UNIVERSITY awards a contract, it will award the contract to the offeror whose proposal is the most advantageous to UNIVERSITY, considering price and the evaluation factors set forth in this RFP. The contract file must state in writing the basis upon which the award is made.

Interested parties may contact Floyd Self at The University of Texas at Austin Purchasing Office for a copy of the RFP document by email at fself@mail.utexas.edu; telephone (512) 471-4266. An original and five (5) copies of the proposal must be submitted by the Proposal submission deadline of June 10, 2005 at 2:30 P.M., Central Standard Daylight Time, Austin, Texas to Mr. Floyd Self, The University of Texas at Austin, Purchasing Office, 2200 Comal Street, Austin, Texas 78722.

TRD-200501963
Francie A. Frederick
Counsel and Secretary to the Board
The University of Texas System
Filed: May 16, 2005

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Texas Water Development Board

Request for Qualifications for Bond Counsel

The Texas Water Development Board (Board) and Texas Water Resources Finance Authority (Authority) are requesting proposals for bond counsel services. The deadline for proposal submission is 1:00 p.m., June 15, 2005.

The Board's and Authority's Boards of Directors will make their selection based upon demonstrated competence, experience, knowledge and qualifications. The Board's and Authority's Boards of Directors will then negotiate with the firm(s) selected a contract at a fair and reasonable price. By the Request for Qualification the Board and Authority have not committed themselves to employ bond counsel nor does the suggested scope of service or term of agreement therein require that the bond counsel be employed for any or all of those purposes. The Board and Authority reserve the right to make those decisions after receipt of proposals and the Board's and Authority's decisions on these matters is final. The Board and Authority reserve the right to negotiate individual elements of the firm(s)' proposal and to reject any and all proposals.

Copies of the Request for Qualifications may be obtained by calling Sissie Stacy at (512) 936-2246 or fax (512) 463-5580 or by mail at P.O. Box 13231, Austin, Texas 78711-3231.

TRD-200501972
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: May 17, 2005

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Texas Workers' Compensation Commission

Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites all qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the Procedures and Standards for the Medical Advisory Committee. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee vacancies:

Primary

* Dentist

* Employer

* General Public 1

Alternate

* Public Health Care Facility Representative

* Dentist

* Pharmacist

* Employer

* General Public 1

* Insurance Carrier

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend all meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at *http://www.twcc.state.tx.us* and then clicking on Calendar of Commission Meetings, Medical Advisory Committee. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or R. L. Shipe, Director, Medical Review, at 512-804-4802.

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

LEGAL AUTHORITY. The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE. The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment: Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The chairman of the MAC is designated by the Commissioners. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman. Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division.

Prior to a MAC meeting confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

a. Preparation of a suitable agenda.

b. Planning MAC activities.

c. Establishing meeting dates and calling meetings.

d. Establishing subcommittees.

e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF. The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES. The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS. When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT. No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER. Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200501977
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: May 18, 2005

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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